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REASON

Free Minds and Free Markets™

March 1996

MISFORTUNE 500

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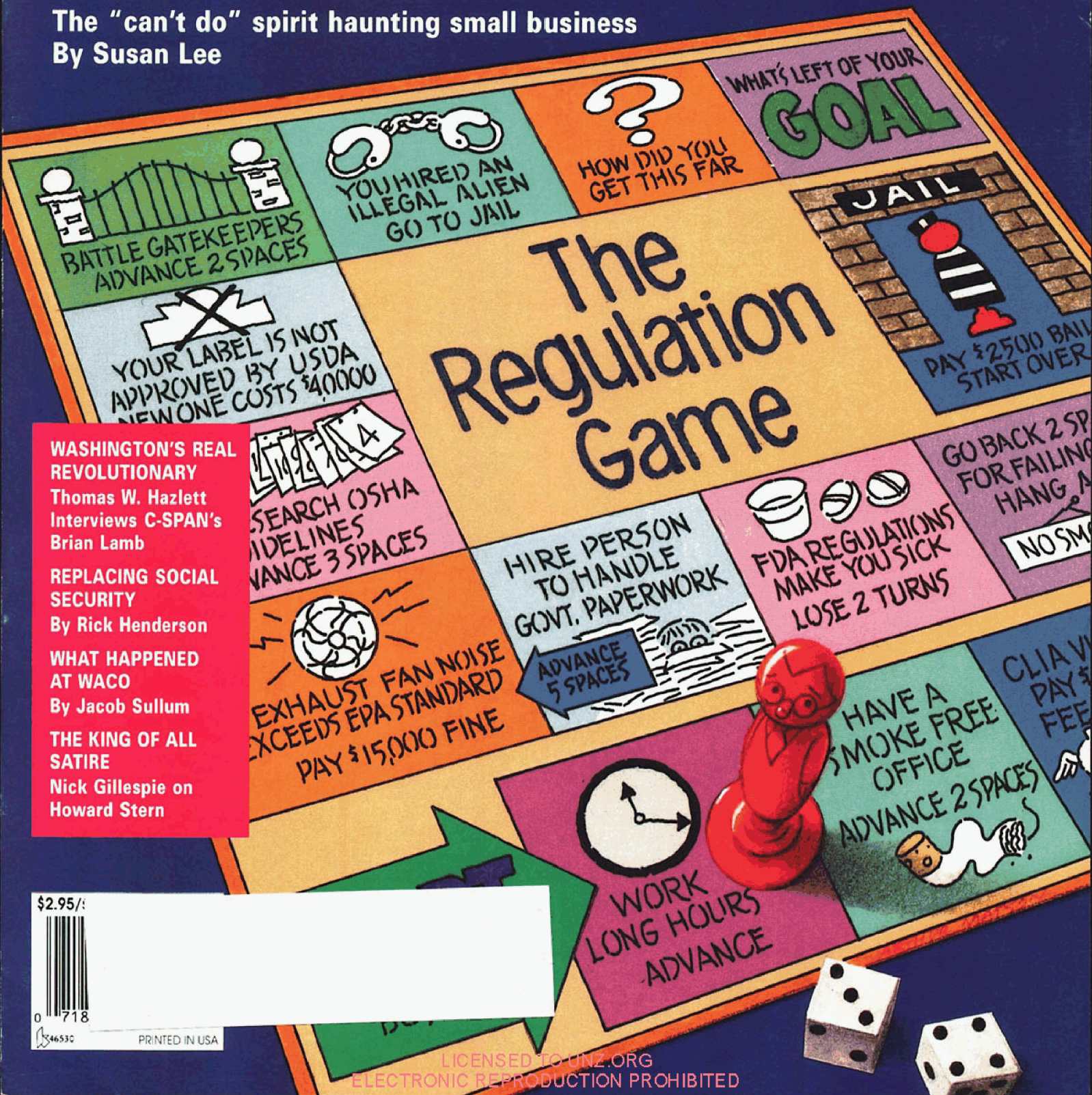
By Susan Lee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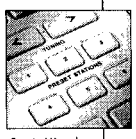

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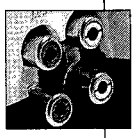

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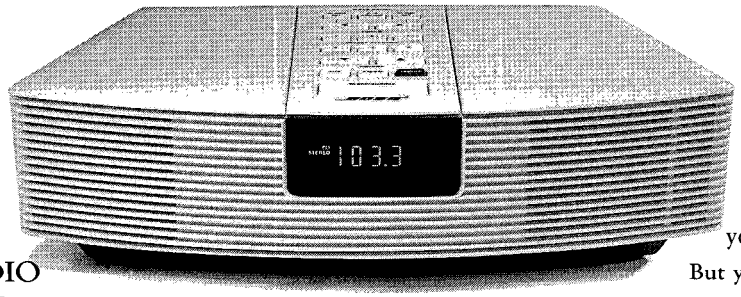

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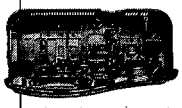

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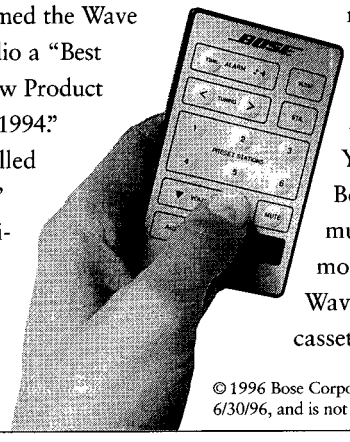

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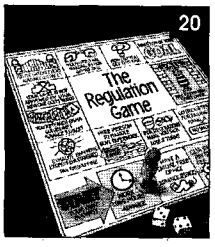

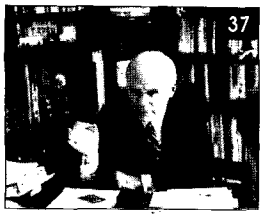

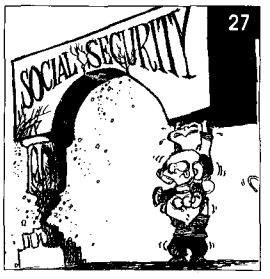

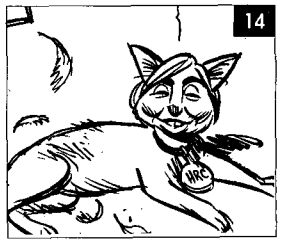

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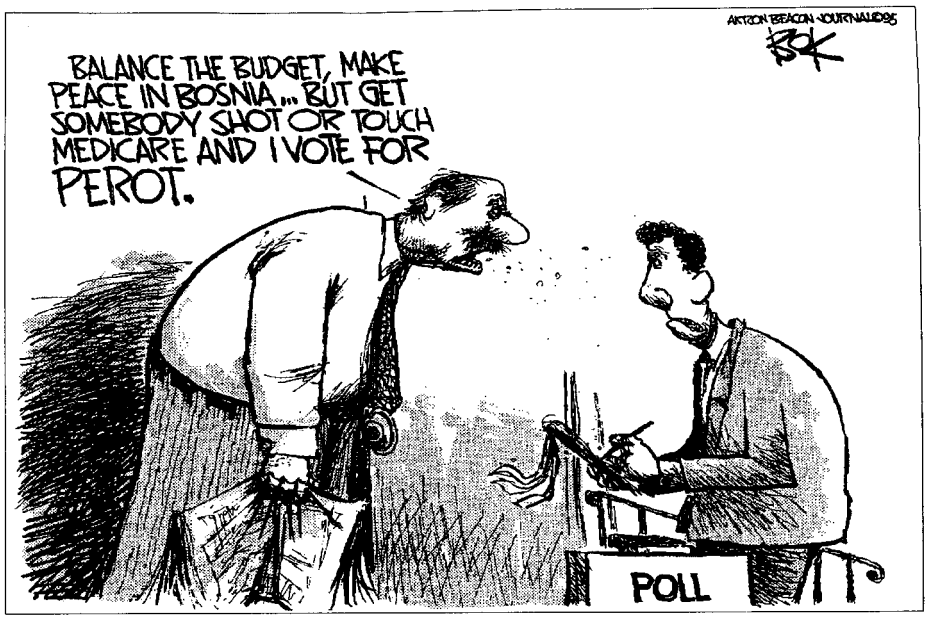
Clueless

By Virginia I. Postrel

Most people don't pay much attention to the news—which makes you wonder about those polls.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BALANCE THE BUDGET, MAKE PEACE IN BOSNIA... BUT GET SOMEBODY SHOT OR TOUCH MEDICARE AND I VOTE FOR PEROT.
POLL

DURING THE FEDERAL GOVERNment's first shutdown last fall, CNN sent a reporter out to get the proverbial man-in-the-street's thoughts on the subject. The reporter roamed what's usually referred to as "the affluent Westside" of Los Angeles, asking people why the government was closed and what Congress and the president were arguing about.

Not surprisingly, they didn't have a clue. The best answer was a vague reference to Medicare. All in all, these seemingly well-educated, well-to-do Americans had absolutely no interest in Beltway disputes and, with one exception, they weren't ashamed to admit it.

Washington viewers undoubtedly chalked up this ignorance to Southern Californians' notorious propensity to ignore weighty issues—we're reputedly all airheads out here in the sunshine. But while it's true that Los Angeles is less politically intense than many cities, those men and women in the street could have been just about anywhere.

In late December, what used to be called the Times Mirror Center for the People and the Press released a compilation of six years of research on what news stories Americans followed, and how closely, and on what facts people know. (Thanks to budget cutting at Times Mirror, as of January 1 the center has become the Pew Research Center.) The results: People pay attention to disasters, natural and man-made, and wars involving U.S. troops. They pretty much ignore everything else. And they know precious few facts about national issues.

For example, write the researchers, "an August 1995 survey about Congressional issues found that among the public at large, 21 percent knew at least three out of four well-reported facts: 1) that the House had passed more legislation than the Senate, 2) that the telecommunications bill would deregulate the telephone industry, 3) that Medicare's long term solvency was in question, and 4) that Clinton opposed GOP proposals to lift the Bosnian arms embargo."

Ignorance declined with age, with 30 percent of those over 65 knowing three out of four facts, versus a mere 8 percent of those under 30. And women were particularly ignorant: Only 12 percent knew three out of four answers, compared to 30 percent among men. These results do not exactly suggest a well-informed American public.

Indeed, despite reports in major newspapers and on cable and broadcast TV, the Times Mirror survey itself hasn't penetrated the popular imagination. Even the most informed political junkies seem not to have discovered it.

How else can we account for the continuing credibility reporters attribute to poll results? *The Washington Post*'s Thomas B. Edsall, for instance, confidently writes that "[t]he clearest finding" in polls "is that Republicans have not succeeded in winning majority support for their budget plan, or, more especially, their approach to Medicare." And ABC's Forrest Sawyer confidently tells *Nightline* viewers that "an overwhelming 78 percent say the shutdown is a bad thing."

These results aren't statements of feeling, like the president's or Congress's general approval ratings. They don't capture attitudes (agree or disagree: "The federal government controls too much of our daily lives"). They imply a knowledge of facts. They assume the public knows what the Republicans' approach to Medicare is, or can assess the effects of a government shutdown. Pollsters are asking people questions they aren't equipped to handle but are too embarrassed not to answer. Then both reporters and politicians are making a big deal of the response.

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EDITORIALS

THE DIRTY LITTLE SECRET OF AMERICAN politics, laid bare by the Times Mirror study, is that most Americans don't know enough to form an intelligent opinion on specific issues. Our political discussion takes place among self-selected elites; they may not be any smarter than the rest of the country, but they pay more attention to the news.

Invocations of grassroots sentiment and appeals to polls, at least on issues rather than general attitudes, are disingenuous at best. Elites use "public opinion" as a prop when they don't want to make arguments. "Do what I want," goes the subtext, "or lose the next election." Never mind whether what I want is a good idea.

The conventional wisdom blames public ignorance, when it's acknowledged at all, on alienation from politics caused by divisive rhetoric, superficial news reports, and big-money campaign donors. It's a plausible story. But the Times Mirror numbers suggest something a little more complicated. People also don't know much about business or science news, in which political alienation plays little role, and women in particular know very little about stories that don't center on a person. Abstract news bores most people. The stories that rivet the nation's attention are dramatic—the *Challenger* explosion, the Los Angeles riots, or little Jessica falling down a well. They take place in real time. The scripted drama of Washington press conferences, whether it's talk of "revolution" or sob stories about how Medicare cuts will hurt Jane Smith, doesn't cut it.

Attention is our scarcest resource, and most people are too busy getting on with their lives to devote their limited attention to dull news they cannot affect. "Rational ignorance," the economists and political scientists call it.

If the public doesn't know much about political issues, one solution seems obvious: We can hand over power to the experts and effectively disenfranchise the masses—they can vote, sure, but the real decisions will be made by bureaucrats. This is the approach taken by turn-of-the-century Progressive technocrats and, much more extensively, by Japan and France. In America, however, with its strong culture of social equality and "get out of my face" natural liberty, technocracy breeds not respect for government but a mixture of fear and scorn.

IT PRODUCES THE ATTITUDES LAMENTED BY Richard Cohen in a January *Washington Post* column. Cohen excoriates intellectuals, and the public at large, for seeing the budget negotiations as a childish exercise—a tantrum thrown by immature politicians. "Is it, in fact, asking too much of everyone, especially intellectuals, to characterize a budget impasse as a clash of ideas or principles and not, solely, as a battle of egos?" he writes.

Yet technocratic politics teaches the public that governing is a matter not of fundamental disagreements but of technical details. It says politicians are "doing their jobs" when they pass laws, not when they debate philosophies, and it suggests that solutions are easy to find.

It is the politics of Ross Perot, of people who believe that government is an engine that simply requires a competent, pure-of-heart mechanic to get under the hood and fix things. If government isn't working, it's because the people in it are corrupt, incompetent, or both. (Interestingly, an earlier Times Mirror report described Perot voters as "not particularly knowledgeable about politics.")

The alternative approach is to limit the scope of government so that good citizenship no longer requires knowledge of a vast array of issues. This solution isn't perfect, and some institutions of expertise, such as the courts, will always be needed. But it recognizes the fundamental fact of human existence: that our time is limited. We cannot know everything. And we cannot devote our lives to politics if we are going to do other things.

The only way to square broad-based democracy with the limits of human life is to keep most decisions out of the realm of politics. That's not the only argument for limiting the scope of government. But it is a good one.

Drug Charge

By Jacob Sullum

Why are more kids using drugs?

TEENAGE DRUG USE IS UP AND ORRIN Hatch says it's Bill Clinton's fault. "President Clinton has been AWOL—absent without leadership—on the drug issue," the chairman of the Senate Judiciary Committee said at a December press conference. "Ineffectual leadership and failed federal policies have combined with ambiguous cultural messages to generate changing attitudes among our young people and sharp increases in youthful drug use."

It's tempting to dismiss Hatch's remarks as partisan posturing. But history teaches us to be on guard when politicians start warning that the nation's youth are in peril. After all, parental alarm helped set off the wave of anti-drug hysteria that swept the nation in the 1980s.

And Hatch is right about one thing: Drug use by teenagers seems to be rising. In the 1992 National Household Survey on Drug Abuse, 4 percent of respondents in the 12-to-17 age group reported using marijuana during the previous month. That figure rose to 4.9 percent in 1993 and 6 percent in 1994. The increase in marijuana use was the main reason for the rise in past-month illegal drug use, which went from 6.1 percent in 1992 to 8.2 percent in 1994. Those figures follow a 13-year decline, and they are still less than half the peak levels seen in 1979. But the rise seems to be more than a blip. The trend can also be observed in cultural indicators such as the movie *Dazed and Confused*, caps embroidered with cannabis leaves, the popularity of the pot-obsessed rap group Cypress Hill, and the *Saturday Night Live*–inspired catch phrase, "you can put your weed in there."

Hatch's explanation for the trend—Clinton's lack of enthusiasm for the war on drugs—is unconvincing. For one thing, Clinton, like his Republican predecessors, has requested ever-escalating anti-drug budgets. Hatch says more of that money should be spent on interdiction. But a wide range of drug policy specialists, including congressional researchers and scholars at the RAND Corporation, have concluded that beefing up interdiction is not a cost-effective way to raise retail prices or reduce availability.

Hatch also charges Clinton with neglecting enforcement. Yet during his administration the number of Americans in state and federal prisons surpassed 1 million for the first time, largely because of harsh sentences for drug offenses, and the United States now has the highest incarceration rate in the world. The total number of drug arrests reached a record 1 million in 1994, about 43 percent more than in 1991. Nearly half of those arrests were for marijuana, most for simple possession. Says Allen St. Pierre, deputy national director of the National Organization for the Reform of Marijuana Laws, "These data confirm that the federal government's war on marijuana consumers has gotten significantly tougher under Clinton's regime."

Which makes you wonder just how much impact federal drug policy has on a teenager's propensity to smoke a joint. Another puzzle: The same surveys that find an increase in teenagers' use of marijuana and LSD also find an increase in their use of tobacco and alcohol. In the Household Survey, for example, the percentage of 12-to-17-year-olds who reported smoking cigarettes during the previous month rose from 9.6 in 1992 to 18.9 in 1994. Past-month alcohol use rose from 15.7 percent in 1992 to 21.6 percent in 1994. In proportional terms, marijuana use increased more than alcohol use but less than cigarette use. Enforcement of the laws forbidding sales of tobacco and alcohol to minors has never been very effective, but there's no reason to believe it has been especially lax in recent years.

On the other hand, during the last decade both legal and illegal drugs have been the targets of pervasive propaganda, much of it government-sponsored, aimed at convincing kids to stay away from them. Posters and TV ads depict smokers as disgusting, inconsiderate, and antisocial. DARE communicates an all-or-nothing, "Just Say No" message to elementary-school students. A typical fifth-grader exposed to DARE at a Los Angeles school where my wife taught wrote an essay in which she pledged never to drink beer or smoke pot, because she wanted to attend college, get married, and raise a family—accomplishments that exposure to alcohol or marijuana would make impossible. Commercials from the Partnership for a Drug-Free America portray pot smokers as lazy, stupid, and unattractive. Their vivid images (the fried egg/brain, the diver jumping into an empty pool) warn of disastrous consequences from experimenting with illegal drugs.

Those scare tactics may work over the short term, but they tend to backfire as kids get older. For one thing, teenagers discover through personal observation that much of what they've been told about drugs is nonsense. (Drug warriors are alarmed that the percentage of high school seniors who think smoking marijuana poses a "great risk" has dropped, but the truth is that smoking marijuana *doesn't* pose a great risk.) Perhaps more important, many adolescents define *cool* as whatever most offends adults. Which may explain why tobacco's popularity has increased the most.

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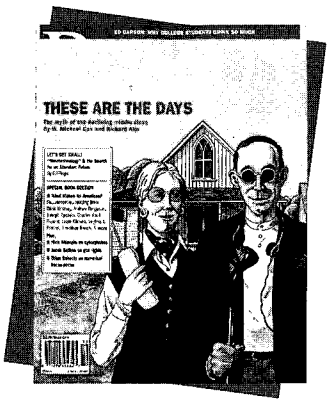

Unhappy Days?

"The Good Old Days Are Now" by W. Michael Cox and Richard Alm (December) is the best retort to the ignorance of the doomsdayers seen in a long time. You are to be congratulated and thanked. Much more of what you have done is needed.

Donald R. Marsh
Seattle, WA

I do agree with Cox and Alm's essay on the need for meaningful data to counterbalance economic mythologies, but see no references to support the data quoted by the authors. The putative "improvements" quoted to support the notion of greater well-being are mainly trivial (pagers, video games, electric knives, etc.). What has been happening is that high-tech gadgets are replacing human contact resulting in a poorer, more alienated social environment. This has happened because the cost of such technology is so much lower now whether the wage rates have declined or per capita income has increased.

I have serious doubts regarding the validity of the data relating to extra leisure and the shorter work week. In the computer industry long hours on the job are the norm, and are not recorded and thus never reported. Vacations are apparently more generous but can only be taken in full at the expense of losing a job.

David Brown
Fairfax, CA

W. Michael Cox and Richard Alm state, "The first test of national well-being, the one that makes the most common sense, should be the material facts of life." They try to support that hypothesis with a virtual whirlwind of facts and figures. If that statement is true, then we should all be as happy as proverbial clams. Unfortunately, most folks are not all that happy. Either everyone is just too dense to realize how good they've got it or that "test of national well-being" touted by Cox and Alm is off the mark. I suspect the latter. The material facts of life are neither the first test of national well-being nor the one that makes the most sense. It is just the only one that the current version of America has to sell.

The material facts of life pertain only to survival and, as any first-year psychology student knows, it is difficult for any person to attain true happiness until he or she moves beyond that point. Once we reach a certain level of comfort it is time to pursue other things. Bigger houses and more toys are just higher levels of survival. We really don't even need them. The American myth has simply convinced us that we must have them. I think that is why there is a certain amount of nostalgia for the 1950s and early '60s. As a country, that was the first time we had achieved stability as far as daily survival was concerned. As a people, we were poised to move on to bigger and better things.

But we didn't. Instead, we built bigger houses and invented neater toys. We became infatuated with those material facts of life. And we paid a monstrous price for them: Shattered and scattered families. World record crime statistics. Loss of personal freedom to bloated and intrusive government. And general unhappiness.

Perhaps we feel that we should be handling all of this bounty just a little bit better. Perhaps it is just too obvious that any society that uses increased levels of consumption as its standard of excellence cannot possibly come to a good ending in a world of limited resources. Perhaps we are uncomfortable with the fact that for every one of us who succeeds in carving out a larger piece of the pie than we really need, there is another one or two who are forced below the level of subsistence. (The high rate of poverty in our country is neatly done away with by the fancy averages of Mr. Cox and Mr. Alm.) Perhaps we question that wonderful quality of life we are told we have. We lead the world in expensive drugs and high-tech surgery but can't keep our babies alive and continue to slip behind older, more established countries in day-in-day-out health care. We give additional years to our elderly by extraordinary means only to let them die alone in nursing homes and hospitals.

I don't buy the material facts argument and, if the general mood of the country is any indication, I suspect that a lot of other people do not either. If a person departs this world having left some mark—whether it results in a Nobel Prize or just the lasting admiration of a child—then that person will have lived and died well. But if all a person manages to do in this life is accumulate material things and avoid death a little longer than normal—than that is a life wasted. We were meant for better things.

There is another and better test of national well-being. However, it is pretty tough to pin down because it has more to do with feelings and senses and intuition than it does facts and figures and material things. It does not easily yield its secrets to the calculator. Yet it is there and I believe we are all aware of it.

Dan Kacsir
Indianapolis, IN

While I thank Cox and Alm for their recognition of the efforts put forth by work-at-home women in fulfilling their domestic responsibilities, I cannot help but question

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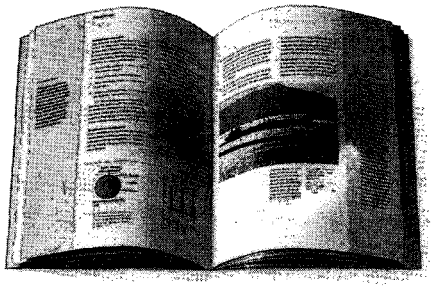

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their sincerity and their rose-colored analysis of the economic impact women entering the labor market has had.

True, the time necessary to devote to domestic tasks has shrunk due to technology and the market's provision of alternatives to women performing their own household tasks. However, are the authors prepared to say that every family can afford this technology or alternatives and, more importantly, that the market can possibly provide an alternative to the love and caring provided by a mother in the rearing of her own children? Are women as mothers nothing more special than an economic unit? This is the ideology of cultural suicide.

The authors state that working women make families better off. Even aside from the love which can only be provided by a mother, freshman-level economics proves this to be false. The law of supply and demand as it pertains to labor is clear: Women entering the work force have increased the supply of workers while the demand lags far behind, causing wages to fall and unemployment to rise. How is this good for families?

Secondly, those families that have benefited have caused an increase in demand for goods while supply lags behind, causing goods to become more expensive. This has priced many families, especially those who allow mom to perform her God-given function, out of the market for many goods they should otherwise be able to have. And this is good for families? Of course, as the authors pointed out, recent history has been good for restaurants; it has just been a net loss for families.

Timothy M. Barrett
Virginia Beach, VA
timobar@beacon.regent.edu

Authors Cox and Alm don't make a very convincing case in their December article. In the first place, they ignored the cost of a mortgage. In the mid-'60s my wife and I purchased our first home with a 3.25 percent mortgage. Today only the fortunate few get by for less than double that rate, and most pay triple.

In those days I would pay Social Security tax until September or October and pocket that amount for the remainder of the year. This was on a teacher's pay, no less. How many inexperienced teachers earn in excess of the $59,000 earnings cap today? The first two new automobiles I bought didn't have the extra cost of seat belts, airbags, and catalytic converters factored into the price. In 1970 we bought a small nine-year-old airplane for $3,000. Today a similar airplane, if you could find one, would cost more like $35,000; approximately 11.6 times as much. Product liability awards have driven the cost of general aviation aircraft, even used ones, out of reach of all but the well-to-do. Teachers' salaries have not multiplied by a factor of 11.6 since 1970.

The increased costs of borrowing money, government regulations, rampant litigation, and Social Security were ignored in the article. Sorry, guys, but when I look back on the '60s as the "good old days," there's more involved than just nostalgia.

Gary Yocum
Marshalltown, IA
gmyucoy@aol.com

In "The Good Old Days Are Now," the authors grossly misrepresent the arguments they claim to attack and display both slippery analytical techniques and an unfamiliarity with bipartisan public policies.

Nobody claims that all Americans are worse off than before, that all families can survive only if two adults are working, or that the United States is generally worse off than other industrial countries. The most prominent argument is that the income gap between high-paid and low-paid workers is greater in the United States than in other industrial countries, and that the gap has been widening. Cox and Alm indicate as much by their initial reference to the steady decline in average hourly wages since 1978.

They dismiss such data by emphasizing per capita income for all Americans, and by pointing to the absence of fringe benefits from hourly wage data. Surely they know that averages do not accurately outline the gaps between groups, and that all sorts of fringe benefits are rapidly disappearing.

Almost shockingly, they seem unaware of the bipartisan policy to maintain about a 6 percent unemployment rate to control inflation by depressing wages, thereby making it very difficult for young people to get full-time jobs at decent wages. Obviously, decisions to delay marriage or not marry at all are not necessarily voluntary, as Cox and Alm prefer to suggest.

They do provide laughs here and there, and we should thank them. Yes, there are indeed more VCRs in the country than in previous decades. There also were more radios in the 1930s than in the 1920s. Perhaps they believe that the Great Depression was imaginary.

Frederick C. Thayer
Visiting Professor
Department of Public Administration
The George Washington University
Washington, DC

W. Michael Cox and Richard Alm reply: David Brown has "serious" doubts about our facts and figures. Every statistic cited in our article came from a public source, easily available in most libraries. Overwhelmingly, the data came from various government agencies and *The Statistical Abstract of the United States*. That's true of our numbers on work hours. The U.S. Department of Labor tells us that Americans, on average, are working less. It strives to remain consistent over time and reduce any biases. Why do so many people find it hard to believe Americans work less? Our guess is they're generalizing from a few observations, or maybe from themselves. The baby boom generation has entered the 45–54-year-old age category—the period of life during which people typically work hardest and longest. So many of us today are perhaps looking back on the carefree days of youth. But that's not the correct perspective to use for comparison. The correct perspective is our lifetime compared to that of our parents and grandparents. Surely, few would doubt that they worked harder than us.

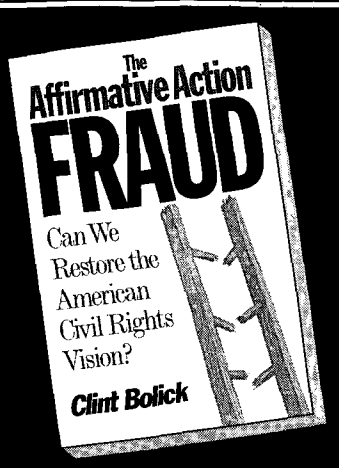
A few modern-day gadgets might seem

trivial to some people. That's a value judgment that cannot be tested in any way. One man's triviality might be another's highest blessing. Try telling an opera buff that the clarity of sound on a compact disc isn't a great gain for mankind. Even we have trouble with the social value of video games, but on the whole technology has made life more pleasurable, less burdensome, and cheaper. Today, you can watch a $48 million motion picture such as *Jurassic Park* in your living room for $2.00. Having seen the hard lives of our parents and grandparents, we do not agree that the machines of modern life are trivial. In addition, our list of advancements included organ transplants, computers, lifesaving airbags and antilock brakes, and a host of other inventions that certainly can't be dismissed as trivial.

In the notion that today's technology is alienating, we hear romanticizing of the past, looking back to a golden time of brotherhood and community that never really existed. There is nothing more alienating to the human spirit than the backbreaking and repetitive work our forbears did on farm, factory, and home. There may be negative side effects to technology, as well as benefits, but the average American today has a much better opportunity to find happiness, however he might define it.

It may surprise Dan Kacsir that in our assessment of the state of the United States, we never used the word "happy." We are economic researchers, not philosophers or psychologists. Our goal is to show that many of the sour economic commentaries of our times had ignored empirical data that, taken together, prove material progress didn't stop a generation ago. We don't know whether material progress creates happiness, but we strongly suggest that the absence of it brings misery.

Mr. Kacsir repeatedly asserts that Americans are unhappy. We know of no objective measure of the nation's mental state, if indeed there is such a construct. Unhappiness in America is an assumption. We prefer to rely on our personal experience: We know some happy people



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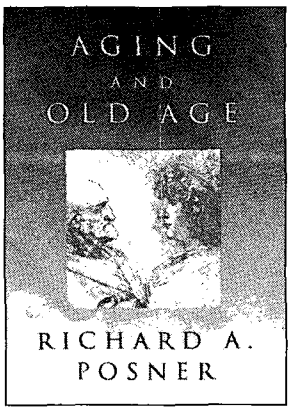
AGING AND OLD AGE

Richard A. Posner



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and we know some unhappy ones. It's an individual matter, and bigger houses and neater toys may help make some of us happier. We prefer not to look down on those people. Generations ago, Alexis de Tocqueville pondered a similar question: "Why the Americans are so Restless in the Midst of Their Prosperity." Wondering why Americans aren't prone to count their blessings is interesting but it's nothing new. Neither is fear of "ruinous change." At least a few members of every generation have seen the changes in their lifetimes as harbingers of social and moral calamity.

Obviously, Timothy M. Barrett didn't take freshman economics from Dr. Cox. If he had, he would have learned the limitations of partial supply-and-demand analysis. The entry of new workers into the labor market will depress wages and cause unemployment only if the demand for labor stays put. But it doesn't. When women leave home production and enter market production (which many people mistakenly refer to as "get a job") both labor supply and labor demand increase. Somebody else has to cook the food, clean the house, wash, iron and mend clothes, do the taxes, and on and on. To ignore or discount all those tasks is not only insulting to women, but misses the whole point of how economic progress has occurred through specialization. At one time, both men and women engaged in purely household production, usually on a farm. As first men, and then women, entered the labor force, they turned over to the market the often onerous chores they once did. As this occurred, it created demand for new workers, from grocers to financial planners. Similarly for women.

The facts tell what this has done to wages. When fringe benefits are included, real wages have risen as women have entered the labor force over the past four decades. What's more, unemployment has gone up and down with the business cycle, but the U.S. economy produced an average of nearly 1.9 million jobs a year since 1970, helping keep unemployment relatively low.

We stand second to no one in our admiration for motherhood, but every family has a right to decide whether one parent should stay at home and nurture the children. Many women, and even a few men, are choosing to do just that. This is an individual question of values and priorities, not economics. Our economic point still holds: When men moved into the labor market and specialized, households could afford more goods and services. The principles aren't any different for women. We recognize a child's need for love from both parents, but we aren't ready to prescribe for society the precise circumstances in which that benefit ought to be delivered. What's right for one family might not be for its neighbors. What's right for one generation might not work in another. We continue to believe that market work can be compatible with responsible parenting—for both men and women.

Gary Yocum's letter allows us to correct one of the most persistent misinterpretations of our research. We do not believe that *every* American is better off in *every* way. In good times, it's always easy to find someone who is flat broke. In hard times, there's always somebody who is making it big. To find examples of people who aren't sharing in the general progress doesn't take away the gains for society as a whole. Most people are, on balance, better off. The statistics we cite prove that.

We deliberately chose to examine broad trends, steering down the middle of the course, so we wouldn't fall into the logical trap of false generalizations. It's wrong to take the few observations at hand and conclude they represent the whole country. That's why the government spends so much money collecting economic data. That's why statisticians use such concepts as averages and per capita. These allow for more accurate generalization.

We, too, deplore excess regulation, high taxes, and foolish litigation. They are indeed drags on the economy. Perhaps that ought to make us marvel even more at the progress that's been made in the past generation or so. Our free enterprise economy has made most of us better off despite the handicaps put on it.

Contrary to Frederick C. Thayer, we find the data on wages full of ambiguities that can create a misleading view of the performance of the U.S. economy over the past two decades. What are "wages" in one year are not in another, largely because of changes in fringe benefits. These numbers are not a useful tool for measuring changes in our living standards. We rely on things that are consistent and countable, such as per capita ownership of automobiles or square feet in an average house. As we assembled the data, we wondered why the researchers who concentrate on the wage data fail to mention all of the facts and figures that don't support the conclusion that Americans are worse off. We at least gave our readers a look at the wage data.

We are currently hard at work on further research that will address Prof. Thayer's concern over the widening gap between rich and poor. For now, we can only give a small hint of the conclusion: There's strong evidence of upward mobility in the United States. The conventional view of income distribution misses the most important issue: opportunity. It abounds.

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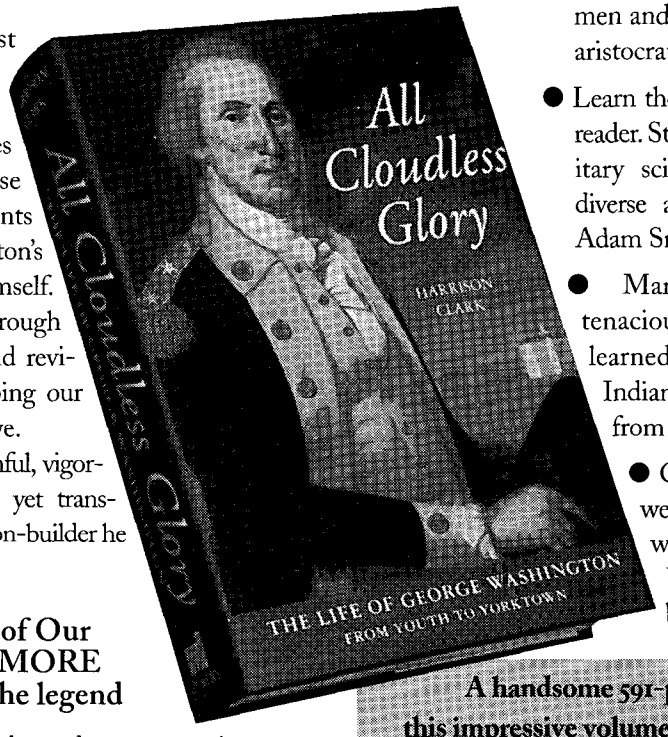

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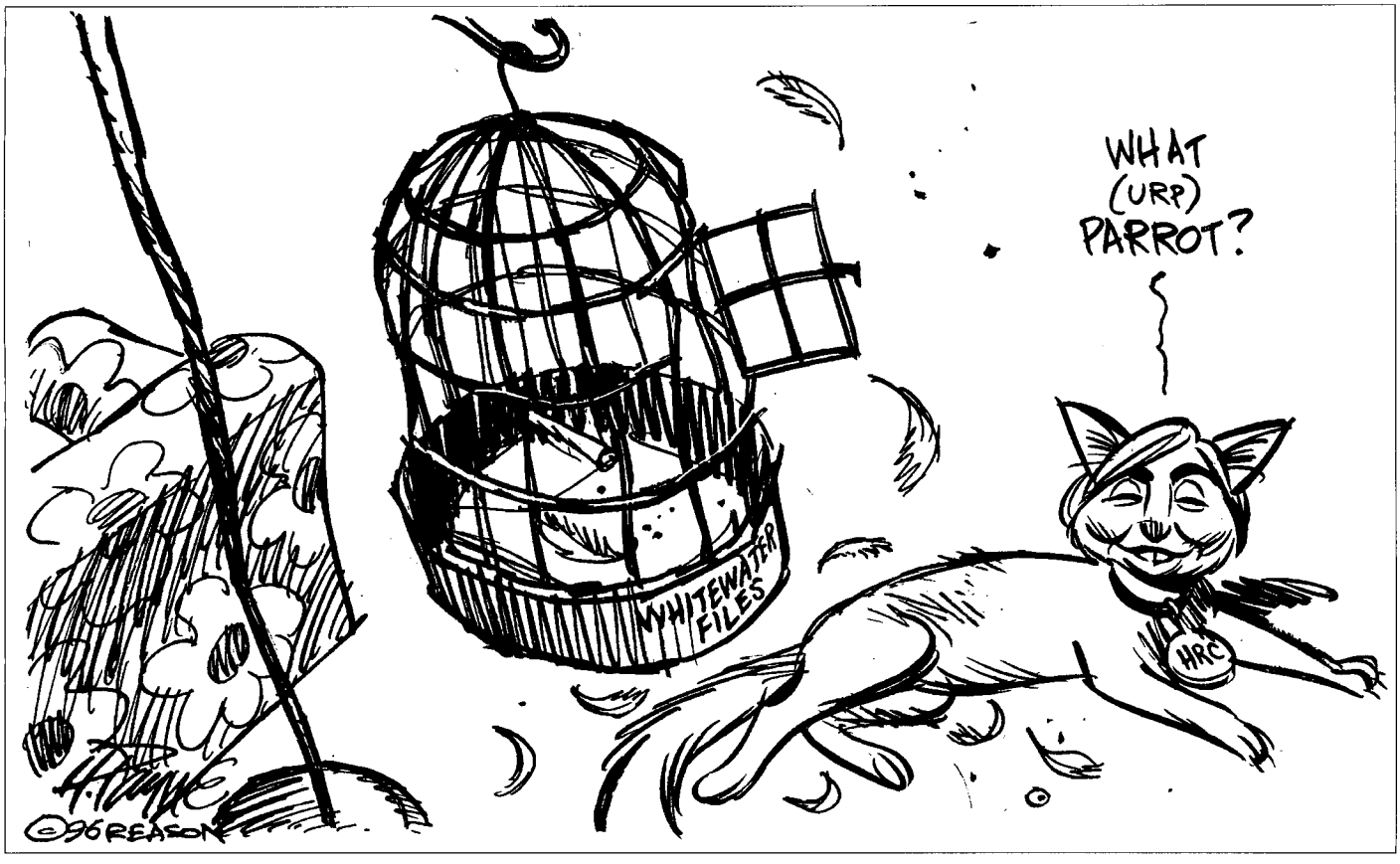


HENRY PAYNE

SCOTT STANTIS

■ **In Zambia, the speaker of the parliament** admonished a cabinet secretary and ordered her from the chamber. Her crime: She was wearing slacks. Speaker Robinson Nabulyato said to Energy and Water Minister Edith Nawaski, "I would like to ask the minister to go out of the house and dress like a woman." As the 157-member chamber shouted, "Shame," Nawaski left. She returned an hour later wearing a black skirt.

■ **How bad are the nation's schools? Just** ask tour guides at the National Park Service. One question that comes up at the Petrified National Forest: "How long is the 17-minute film?" And visitors to the Grand Canyon have asked where the carved faces of the presidents are. Presumably, they have Mount Rushmore in mind.

■ **Outraged by reports that some guests** on daytime TV talk shows are phony, Rep. Nita Lowey (D-N.Y.) is taking action. She says she will introduce legislation banning talk shows from promoting bogus guests as real ones. Great, so now we'll know that the people who have their lives ruined on those shows really have had their lives ruined and aren't just faking it.

■ **The Associated Press has found that a** week after President Clinton took office a federal employees union gave the administration a list of workers at the Department of Housing and Urban Development. The union claimed that the people on the list were anti-union, racist, or Republican. Since then, 11 of the 13 people on the list have been reassigned, had responsibilities taken from them, or been forced from the agency, says the AP. Almost all were career civil servants who are supposed to be immune from political pressure. The administration denies any wrongdoing.

■ **Touchy, touchy, touchy. When Boston** radio station WBCN began playing cuts from the album *Hempilation*, a benefit for the National Organization to Reform Marijuana Laws, the Governor's Alliance Against Drugs sprang into action. They organized a protest against the station. They asked police officers to attend the rally and "bring [their] squad cars." The station charges that the government-sponsored event was an attempt to intimidate them. The government denies any wrongdoing.

■ **Choi Sang-han fell in love with a girl** and they planned to wed. The government of South Korea put a stop to those plans. The problem: They share the same surname. A 687-year-old law, written when most Koreans lived in small villages, prevents people with the same surname from marrying. Choi has researched his family tree for 15 generations and says that he and his fiancee share no common ancestors. No matter. The law is the law. Since most Koreans share a handful of names, thousands of couples are trapped by this law. The government recently provided a one-year amnesty to allow some couples to marry, but under counterprotest from religious conservatives, it refused to abolish the law outright.

■ **The European Union's executive** agency has accused Philip Morris of misleading advertising. The company ran a series of newspaper ads saying that anti-smoking laws reduce personal freedom. The agency says this is a lie, and if the company doesn't cut it out, it will ban all tobacco advertising.

■ **Better check that first-aid kit and re**move all the butterfly bandages. The Occupational Safety and Health Administration has just declared them the equivalent of sutures, and only licensed medical personnel may apply them.

■ **Mary Gunnels is going to trial for a sec**ond time. A jury deadlocked in her first trial. Her crime? The city of Brownsville, Texas, found out that she sells silk chrysanthemums to girls going to high school homecoming games. She sells about 30 each year. For that, she has been charged with "knowingly and intentionally operating a flower shop" in a residential area. If convicted, she will face a $500 fine.

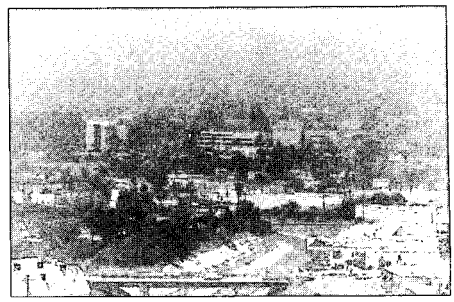
■ **And in Indiana, Pennsylvania, the city** council has voted to ban residents from using furniture outdoors if it is "not specifically constructed for outdoor use." The law is intended to keep college students and others from putting an old sofa on their porch to sit on.

—Charles Oliver

Everybody Out of the Pool

Unpopular carpool rules are finally running out of gas.

By Kenneth Green



BACK IN 1990, THE FEDERAL GOVernment picked up Reg. XV, a Southern California ridesharing regulation, and enshrined it in the federal Clean Air Act. The rule forced large employers in highly polluted areas to adopt programs that would induce their employees to "rideshare" using carpools or other alternatives to driving alone. Rideshare boosters promised not just cleaner air but less stress, lower costs, and increased camaraderie among commuters. Rideshare fairs and carpool posters sprang up like weeds as other polluted regions adopted clones of Reg. XV.

But ridesharing didn't work. Employees didn't want to abandon the flexibility and autonomy of driving alone. Employers had to offer a lot of costly incentives to get tiny increases in carpooling, producing tiny air pollution reductions at ridiculously high costs. Zealous air pollution bureaucrats created a morass of rules and regulations that dictated everything from the educational level of "employee transportation coordinators" to the rank of the company officer signing the company's pledge to support ridesharing.

One Southern California aerospace company spent more than $1 million a year to promote ridesharing and had to submit 23 separate plans detailing how this was to be done. One year, it was told to repaint all of its 45,000 parking spaces so it could assign "preferential parking" based on how often commuters shared rides. Regulators backed down only after the company demonstrated that union rules would result in a cost of $100 per space repainted—that's right, a total of $4.5 million—to assign preferential parking to less than 10 percent of the employee population.

Retreating in the face of a constant barrage of criticism and horror stories, Southern California has progressively weakened its ridesharing rules, and state legislation passed in late 1995 requires air pollution agencies to make rideshare rules voluntary. (Though at press time, the replacement offered in Southern California seems likely to be more costly than the rule it is replacing.) But the battle has been slow, both in California and in other rideshare-mandate states, with rideshare boosters pointing to the federal Clean Air Act as the ultimate justification for preserving regulations at state and regional levels.

Now that has changed. In December, President Clinton signed Illinois Rep. Don Manzullo's H.R. 325 into law, modifying the language in the Clean Air Act to specify that employer rideshare programs are strictly voluntary and at the discretion of state and local agencies. Prospects are good for the eventual withering away of mandatory employer rideshare rules, now that the support of the Clean Air Act has been removed. ®

Down with Taxes

State tax cuts in 1995

By Ed Carson

While attention has been focused on the federal government, 21 states cut taxes in 1995 and none raised them, according to *In the States: Everything's Coming Up Supply Side*, by the Cato Institute's Stephen Moore for A.B. Laffer, V.A. Canto & Associates.

Significant state tax cuts enacted for FY 1996

STATE	As % of FY 1993 General Revenue	In Millions	Per Capita
Kansas	3.3%	$191.7	$73.70
North Carolina	2.5	410.1	57.36
Arizona	2.3	200.0	49.12
Utah	2.0	90.0	46.30
Indiana†	2.0	266.5	45.79
Connecticut*	1.8	200.0	61.09
Wisconsin	1.7	230.0	44.58
Washington†	1.6	236.1	42.95
Idaho	1.5	42.2	36.51
Iowa	1.3	92.9	32.47
New Jersey	1.2	284.0	35.81
Michigan	1.2	283.6	29.62
New York	0.9	575.0	31.63
Delaware	0.7	18.9	26.32
Pennsylvania	0.7	215.9	17.79
New Mexico	0.5	27.3	16.29
Montana	0.5	12.1	14.04
Kentucky	0.4	34.0	8.83
Illinois	0.4	103.0	8.69
Maryland	0.1	13.0	2.56
Nebraska	0.1	1.9	1.16

†multi-year figure was divided by number of years
*Enacted tax cut figure is for FY 1997

Source: *In the States: Everything's Coming Up Supply Side*, A.B. Laffer, V.A. Canto & Associates

In New Jersey, the state has passed the final 15 percent of Gov. Christine Todd Whitman's promised 30 percent across-the-board income tax cut. Arizona took its first step toward fulfilling Gov. Fife Symington's pledge to eliminate the state income tax over four years by reducing tax rates across all income levels.

Tax cut proposals were scaled back or defeated in several states, however. Virginia Gov. George Allen had proposed a $2.1 billion tax cut over five years, but was unable to get anything through the Democrat-controlled legislature.

And despite its subtitle, the study points out that only 10 states passed tax reductions likely to have substantial supply-side effects. Iowa's increase in the per-child exemption from $15 to $40 will do little to spur economic growth.

This Election Year, We'll Make Their Jobs More Difficult.

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Dan Rather

Tom Brokaw

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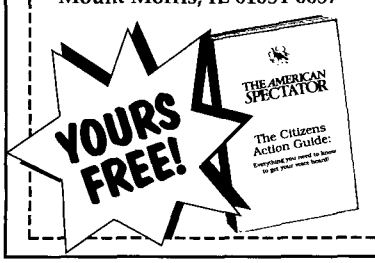

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Balance Sheet

By Rick Henderson

Assets

Trial Period. Congress overrides President Clinton's veto of the securities-litigation reform act. Silicon Valley rejoices. No longer will growth companies whose stock prices drop (and the accounting firms that do their books) fear frivolous lawsuits from parasitic plaintiffs' attorneys. Among other things, the bill establishes a modified "English rule"—if a judge deems an investor lawsuit frivolous, the people bringing suit have to pay the other side's legal fees.

Mass Action. Massachusetts Gov. William Weld and Lt. Gov. Paul Cellucci propose the most dramatic downsizing of any state government in the country. The Weld/Cellucci plan would cut income taxes by 10 percent, end the civil-service tenure system and teacher certification, establish vouchers for government, private, and religious schools, and privatize management of government buildings and of some functions at Boston's Logan International Airport. Will "Taxachusetts" legislators go along?

Pretty Good Outcome. The federal government drops its three-year-old case against computer encryption developer Phil Zimmermann. When someone published Zimmermann's "Pretty Good Privacy" program on the Internet, the feds threatened to charge him with illegally exporting "munitions"—a criminal violation carrying a potential five-year prison term. Time for the feds to go further: Give encryption First Amendment protection.

Military Service Inc. U.S. troops in Bosnia work with a new, private partner—Brown & Root Inc. The Houston-based contractor is digging latrines, cooking meals, placing electric lines, and performing other support services. *The Washington Post* quotes Pentagon sources saying privatization could save taxpayers 20 percent of the $120 billion the military spends annually on health care, base management, accounting, and other logistical tasks.

Liabilities

Investment Tragedies. The typical wage-earning couple who retired in 1982 has received a 16.6 percent real rate of return from Social Security. Today's (and tomorrow's) retirees won't be so lucky. The Tax Foundation estimates that, thanks to declining birth rates and an aging population, everyone born between 1937 and 1990 will get a negative real rate of return on their Social Security "investment." Better start that 401(k).

Wrong Number. And you thought the Americans With Disabilities Act was burdensome. FCC regulations implementing the Hearing Aid Compatibility Act of 1988 (no kidding) will force every company with more than 15 employees to purchase hearing-aid–friendly telephone sets. *Investor's Business Daily* reports that retrofitting existing phones to meet the regs could cost $45 per telephone unit. And new phones with FCC-mandated volume controls cost as much as 30 percent more than similar phones without the controls.

Steep Task. The federal Board of Tea Experts, which has regulated tea imports for nearly a century, survives the Republican "revolution." The domestic tea lobby convinces Senate Agriculture Appropriations Subcommittee Chairman Thad Cochran (R-Miss.) to strike an appropriations amendment that would have abolished the tea tasters. Taxpayers will keep paying $200,000 a year to employ tasters and, by the way, prop up the price of domestic tea.

Net Losses. New York Supreme Court Justice Stuart Ain refuses to reverse his ruling in the Prodigy libel case. (See "Chilled Prodigy," Aug./Sept.) After Prodigy apologizes to Stratton Oakmont Inc., the investment bank that had first sued the on-line service, Stratton Oakmont drops its suit. No matter. Ain's ruling that Prodigy is a publisher stands. The judge says the law has "not kept pace with the technology" and "there is a real need for some precedent." This precedent may bear bitter fruit soon: Prodigy now faces a libel suit in Florida.

Gun Poor

Does gun control discriminate against the poor?

By Brian Doherty

SATURDAY NIGHT SPECIALS AREN'T just tools for mayhem on the cheap. And laws targeting them might just violate the Equal Protection Clause of the Constitution, says a recent study from the *Journal of Criminal Law and Criminology.*

At least four states—Illinois, South Carolina, Minnesota, and Hawaii—enforce "melting point" laws, which ban guns with low melting points. It may seem curious for states to be concerned with metallurgical trivia, but guns with low-melting point metals tend to be cheaper.

Why target cheap guns with such laws? The states' rationales include that those guns aren't useful for sportsmen; that they pose particular problems for ballistics experts; and that melting-point laws reduce criminals' access to guns.

The article written by T. Markus Funk, casts doubts on all those reasons. Self-defense, not sport, is the main reason a poor person, generally disproportionately victimized by crime, would want a gun. The distinct marks defining a bullet as having come from a particular gun are more present in cheaper guns, which have more of the irregularities that mark bullets uniquely. And criminals tend to get most of their weapons from black markets anyway. The Bureau of Alcohol, Tobacco, and Firearms estimates that in violent crimes committed with guns, 93 percent of those guns were acquired illegally.

Melting-point laws' only effect seems to be to keep guns out of the hands of the law-abiding poor. "The historical background of...melting-point laws, the apparent lack of rational justification for the laws, and the laws' ultimate effect of making handguns less accessible to the poor lends...potency to the argument that the passage of melting-point laws was motivated...by...improper discriminatory considerations," Funk writes.

Fighting the Net Nannies

A new grassroots family group battles cyberspace censors.

By Rick Henderson

As 1996 opened, the telecommunications bill before Congress was entangled in disputes between broadcasters, cable companies, telephone services, and consumer advocates. One thing appears to be settled, however: Any bill that passes will try to "protect children" by restricting information transmitted over the Internet.

At press time, legislators hammering out the bill's final language had agreed to criminalize making "indecent" materials available to minors over any interactive computer network. Anyone providing indecent materials or access to them could face fines of $100,000 and as much as five years in prison.

This attempt to regulate cyberspace has generated opponents beyond the usual free speech circles: A group of parents of small children who frequently use on-line media has launched Families Against Internet Censorship. They hope to demonstrate that Internet-literate families will not accept restrictions from the cybercops.

Colorado Springs computer scientist Barry Fagin and his wife, Michele, started FAIC. Parents of two young children, the Fagins recruited the first members by e-mailing people on lists of Brown University alumni and libertarian academics. Within a few weeks of founding the organization FAIC could list more than 50 families in 19 states (and France and Canada) as members. Before the World Wide Web, says Barry, "organizing a group like this would take an incredible amount of time. We're using the Web as an organizing tool to defend itself."

The Fagins want FAIC (FAIC@rmii.com) to become a resource for reporters who seek computer-literate parents critical of government regulation; a clearinghouse for information about software that parents can use to screen objectionable materials transmitted over on-line services; and, in the long term, an advocacy group that files amicus briefs when Internet restrictions are challenged in court. To join, you must have an e-mail address; have at least one child living at home; be willing to let FAIC release your e-mail address to sympathetic organizations; and be willing to list your name and home state on FAIC's World Wide Web page (http://www.rmii.com/~fagin/faic).

Barry Fagin says his long-term goal is to effectively counteract "the inside-the-Beltway view that a vote against Internet censorship is anti-family." ®

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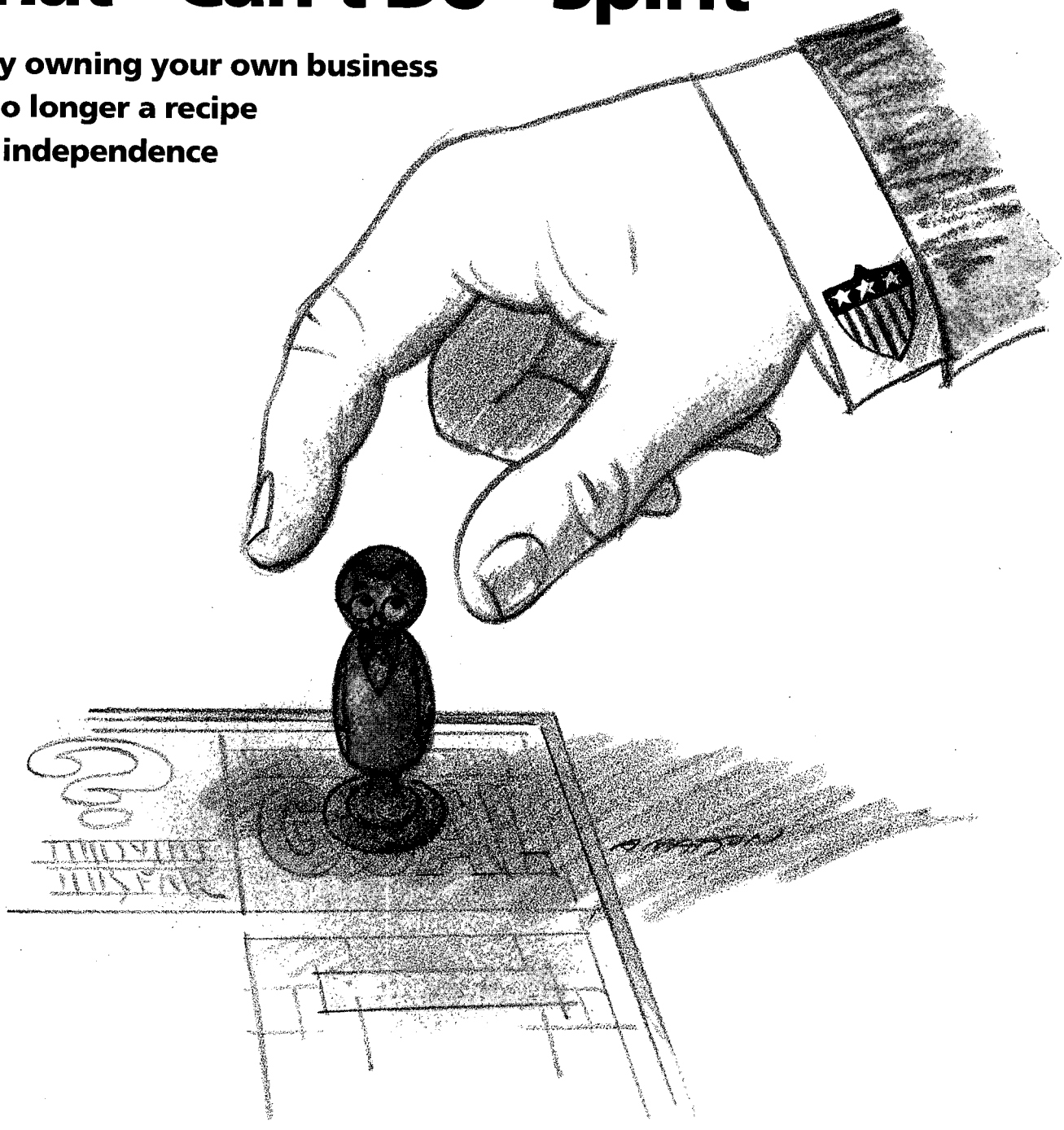
That "Can't Do" Spirit

Why owning your own business is no longer a recipe for independence



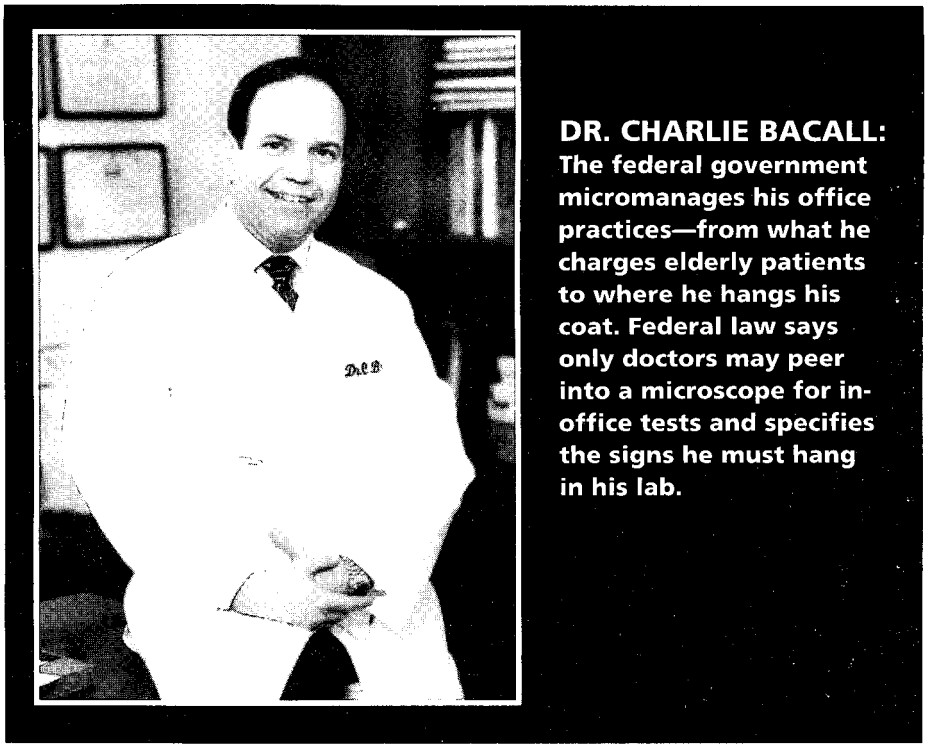
By Susan Lee

When Charlie Bacall arrives at his office in the morning, he is very careful about where he hangs up his coat. Very careful. Not because his boss is looking over his shoulder; he's the boss. Not because his secretary is a neatness maniac; she isn't. He is careful because if he hangs

ART MATSON

his coat next to his lab coat, agents of the federal government can close his office down. Charlie Bacall is a doctor. His practice is regulated by the government.

Invasive government regulation is a direct consequence of the notion that government knows best and that social and economic goals can be achieved by bureaucratic fiat. That notion took hold during the super-normal economic growth of the 1960s which coincided with the acceptance, among Democrats, of an economic theory known as Keynesianism. This theory argued that government could manage the economy to produce strong and consistent growth. Thus, when strong growth actually occurred, people were convinced (mistakenly) that it was due to Keynesian economic management. Indeed, the coincidence was so compelling that by the early 1970s even Republicans had become true believers. And the delusion that government was the Superman of Good Outcomes spilled over into microeconomic and social issues.



DR. CHARLIE BACALL: **The federal government micromanages his office practices—from what he charges elderly patients to where he hangs his coat. Federal law says only doctors may peer into a microscope for in-office tests and specifies the signs he must hang in his lab.**

The drive to regulate began slowly in the 1960s, raced along during the 1970s, held its own during the 1980s, and accelerated in the early 1990s. So far, the Republican Congress has done little to slow it. The result of 30-plus years of bureaucrats with the power to direct events has been the near suffocation of everyday activity for many businesspeople, especially those with small firms.

If that sounds too dire to you, then you are part of the lucky portion of the population who is insulated from this daily intrusion. Your direct brushes with the government are probably confined to specific and discrete events—paying taxes, being licensed to drive a car, or getting a call for jury duty. And although it's hard to think of an industry or profession in which government regulation is absent, the experience for some is more intense than for others. If you work for a big employer, for example, the chances are that your job has little to do with government regulation—that is usually the province of specialized employees in the company—but if you work for yourself, the government is in your face. The extent of the damage becomes clear when the direct impact of regulation is examined. So here are some real stories of what happens when the government mucks about in the way we do business.

First, I've chosen two doctors. Charles J. Bacall and Roy Levit are small businesspeople who bear the brunt of the good ideas gone bad embedded in government regulation—cost, daily frustration, and demoralization. I've known Dr. Bacall for many years because I am one of his patients. I know him to be a dedicated physician and not particularly a whiner or a complainer. I don't know Dr. Levit, but he is respected, successful, and was amenable to an interview. Like many doctors, neither is interested in or knowledgeable about business practices or management.

BUZZ FREITAG

Bacall, 45 years old, became a doctor for predictable reasons: He had an aptitude for science and, preferring people to lab work, chose to be a physician rather than a researcher. But he had other reasons as well. As the child of a poor immigrant family, his father told him more than once: Be your own boss. He says: "My getting a medical education was a way of developing independence in the system, a way of assuring me middle class status." Did he think it was also a way of getting rich? "On no, when I was training in the 1970s, I thought if I could make $50,000 a year it would be the best thing that ever happened to me."

Bacall graduated with an M.D. in 1975 from New York Medical College. When I interviewed him, he was an assistant professor of obstetrics, gynecology, and reproductive sciences at Mount Sinai Hospital in New York City, with an appointment at the Mount Sinai School of Medicine. His practice, which he shares with four other doctors, employs three medical assistants, two office managers, and three medical receptionists.

One of his office managers, Linda Wilhelmy, describes her work as "a ton of paper work and millions of phone calls." She handles patient billing, disability forms, operating-room bookings, blood donations, and off-site appointments for consultations. She works from 8:15 a.m. to 6:00 p.m., eating lunch at her desk. That's her job and she likes it, feeling she gets double satisfaction from helping the doctors and their patients.

Bacall's practice is, for New York City, a fairly old-fashioned one. He doesn't, as many of his colleagues do, demand payment for surgery in advance. "We operate on a handshake. If patients can't pay, we assume they are telling the truth." And if they don't pay? "As long as they send some regular, small payment as a gesture of goodwill, we let it go." He doesn't take credit cards.

"It doesn't seem professional," he says.

Three years ago, Bacall's office spent $30,000 for a computerized billing system. This concession to modern medical practice was late in coming but finally necessary because to bill the old way meant longer waits from insurance companies and the federal government for reimbursement.

It is clear that the office is set up as a business out of necessity and not as a primary object. "There's a fine line between medicine and business. We can't make it feel like a business to patients, but still we want to get paid," says Wilhelmy.

While Bacall doesn't take Medicaid patients at his office, he does treat them through his hospital as an attending doctor two days a month and on-call one or two nights a month. The hospital bills Medicaid in his name but keeps the money.

As for Medicare patients, given the nature of his practice, he has a relatively large share. Many are patients who started coming to the office in the 1940s. Although the doctors who treated them are now retired, Bacall keeps them on because he likes them and views them as a legacy of the founders of the practice. (They are called the "fountain pen ladies" because their early record entries are written in fountain pen.)

On a 24-patient day, five will be obstetrics, 19 will be gynecological—of whom four are fountain pen ladies. When Bacall started practicing medicine, Medicare reimbursement rates were comparable to costs. Now, they cover 80 percent of "allowable charges." Bacall charges, on average, $140 for a routine checkup; Medicare allows $47.63. He figures that he loses money on every Medicare patient. Not just on the dollar rate, but the time spent. While he could be spending an average of 15 minutes with a private patient, Medicare patients take about twice that long — both to undress and dress and because they have multiple complaints. "Their visit is a very important part of their day, their week," says Bacall, "so they can't be rushed and I don't want to rush them."

There is of course no way to see Medicare patients at a reasonable rate—even if they are rich and wish to reimburse him privately. "If I know they are over 65, I can only charge them the Medicare rates and these rates are capped. No reasonable fee-for-service is allowed. The wisest business decision I could make would be to stop taking Medicare patients," says Bacall. Many of his colleagues already have.

But that's hardly Bacall's biggest headache. Of the migraine variety, there are two. The first is the Clinical Laboratory Improvements Amendments of 1988, which covers in-office testing. Now obviously, as both Bacall and Wilhelmy agree, in-office tests should be performed under certain standards and by qualified people. But, they argue, although CLIA standards may have started as a good idea, they quickly have become unnecessarily nit-picky.

For example, CLIA directs that only doctors may peer into a microscope—no matter that medical assistants have been trained to do so. About 90 percent of complaints can be diagnosed under a microscope, an inexpensive and quick procedure. But if doctors don't have the time, the microscope is either bypassed, resulting in a higher percentage of incorrect decisions, or the slides are sent out to a lab, which costs five to ten times more than in-office tests and takes several days.

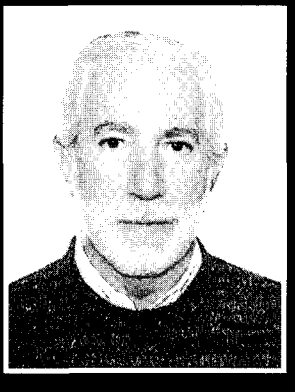
Ditto for in-office blood testing. It's an easy procedure, and the machines that perform the tests are very accurate, but since CLIA requires two controls to be run once a day on each item—hemoglobin and cholesterol in this case—blood testing has become expensive and time-consuming. Bacall has compromised by limiting the days on which his office does blood tests.

CLIA also requires an enormous amount of paperwork. Everything must be logged. For instance, the temperature of the refrigerator and freezer must be monitored and recorded every day, as must a list of patients having tests performed, and a list of all control seras and their expiration dates. The office must also have a cleaning schedule for the lab, notes on how problems are taken care of, and a typed procedures manual stating how tests are to be performed—the manufacturers' manuals are not enough.

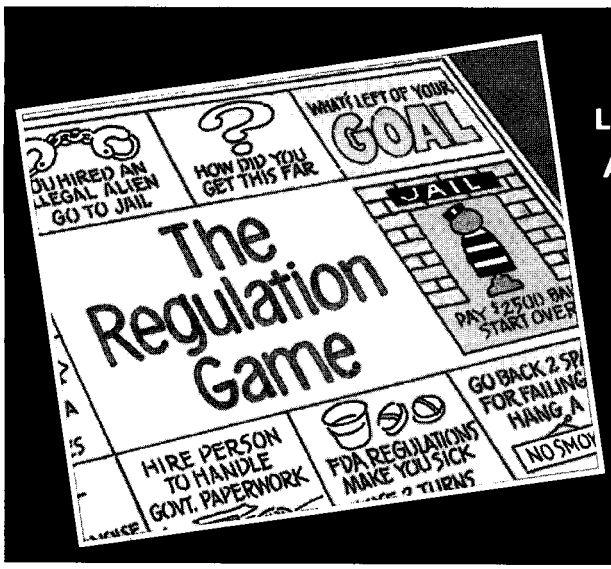
Bacall's office was checked by a CLIA agent last July, at the doctor's expense. The three-hour visit of one agent cost the office $1,000, payable to the federal government. If the agent had found anything out of line, they would have been fined in addition to the inspection fee.

The net result is that an increasing portion of Wilhelmy's salary and office budget is spent on satisfying the demands of government surveillance and a decreasing number of tests are performed in-office because they are no longer economically viable. Even after cutting back on in-office testing, Wilhelmy figures that following CLIA requirements takes a half hour of her day, every day.

A second migraine comes from regulations by the Occupational Safety and Health Administration. They are initially felt by Wilhelmy, who says it takes weeks of research to figure out just what OSHA wants when it issues guidelines. The last big issuance required, among other things, that the office purchase a bunch of signs to alert people that smoking, eating, or drinking were not allowed in the lab area; that it buy special cleaning substances to mop up spills; that it designate a separate space as an "eye wash station," in case anybody gets something in his or her eye during a procedure; and that it purchase separate refrigerators for certain items, clearly marked "BIOHAZARD: No food or



DR. ROY LEVIT: **The Texas opthalmologist, overburdened by regulation, is defiant. "Nobody is going to force me out of private practice. I'm going to pay close attention to the rules and learn to work within the system." Does he feel diminished by playing the game? "Of course I do," he snorts.**


IF YOU HIRED AN ILLEGAL ALIEN GO TO JAIL
HOW DID YOU GET THIS FAR
WHAT'S LEFT OF YOUR GOAL
JAIL
The Regulation Game
PAY $2500 BAIL START OVER
GO BACK 2 SPA FOR FAILING
HANG A
NO SMOK
HIRE PERSON TO HANDLE GOVT. PAPERWORK
FDA REGULATIONS MAKE YOU SICK

Levit's main regulatory nightmare is the Americans with Disabilities Act, especially since many syndromes involve both eye and ear impairment. Before the ADA, he felt able to communicate with hearing-impaired people by gestures or through writing. Now he must pay $50 an hour for a professional signer to accompany them.

drink in this refrigerator." Anything that might be touched by a doctor when examining a patient must be wrapped in plastic, including the examining light, which is sheathed in a sort of condom that must be changed after every patient.

Beyond the frustration and expense of having the government micromanage his office practices, Bacall resents having his treatment decisions second-guessed. "There is a layer, often a large bureaucracy—a government agency or some insurance company—interposed between me and my patient. I have to justify the treatment I know is right. I spend a lot of unreimbursed time on the phone calling and arguing with these gatekeepers."

The basic story is the same for Dr. Levit: government regulation constitutes a daily frustration and intrusion in the way he practices medicine. Levit, 53, is an ophthalmologist specializing in retinal surgery. He got his degree at the University of Texas and began private practice in 1975 in El Paso, Texas. He works with two other doctors. The office employs 14 people; six devote all their time to the business side of things—an office manager, three clerks to handle insurance and collections, a receptionist, and a transcriber (because all chart notes are dictated). Levit spends, on average, an hour a day with the office manager.

Like Bacall, he's had to computerize his billing system—at a cost of $40,000 over the past five years—but he still waits, and waits, for reimbursement. "One of the reasons we computerized was to speed reimbursement, but now that the majority of physicians file electronically, the government has extended payment time to pre-computer levels by rejecting valid claims over and over again," says Levit.

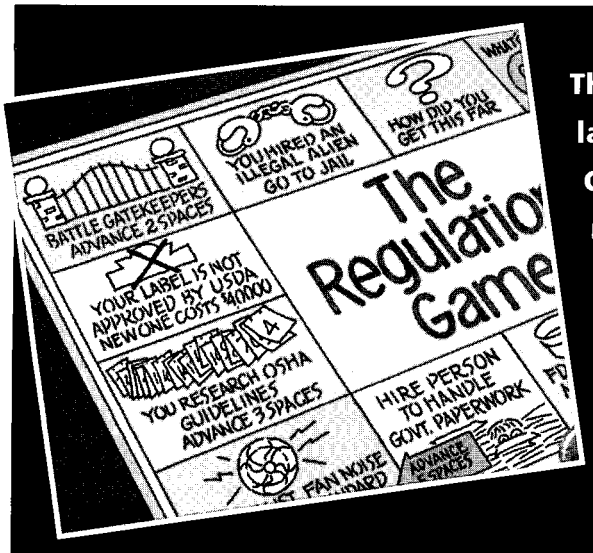
Levit sees on average 30 patients a day. Five to seven of them are new, the rest are there for follow-up treatments. He sees both Medicare and Medicaid patients. He says that everybody is treated the same medically, but the demands imposed by government insurance mean patients are dealt with differently: "For example, Medicaid will only pay for one test per visit, so if we want to be reimbursed, we have to make the patients come in three or four times just to perform the minimum number of necessary tests," he says. That is, if the patient lives nearby; for those beyond 150 miles, Levit just does all the tests in one visit—and loses his reimbursement.

Levit's main regulatory nightmare is the Americans with Disabilities Act, especially since many syndromes involve both eye and ear impairment. (See "Unreasonable Accommodation," August/September 1995.) Before the ADA, he felt able to communicate with hearing-impaired people by gestures or through writing. Now he must pay $50 an hour for a professional signer to accompany them. In the case of Medicaid, which reimburses $8.00 for the entire office visit, he is out $42 right off the bat. He reckons that this requirement costs him $200 to $300 a month. (He lucked out on another ADA requirement, however. The arms on his six examining chairs can be removed, so he didn't have to replace them—at $5,000 a pop—to accommodate the grossly overweight.)

Now all these niggles, taken separately, don't sound like such a big deal. And maybe they're not. And maybe they aren't such a big deal when taken all together. Certainly both Bacall and Levit earn very good livings despite the regulatory overload and the reimbursement shortfalls. And certainly both know doctors who actually make the system work for them—a polite way of saying that some of their colleagues are making out like bandits.

But the effect of all the niggles goes well beyond time and cost and paperwork. A bigger burden hits job satisfaction. Although Bacall is responding rationally to increasing regulation—by cutting back on procedures, hiring two full-time office managers to handle the paperwork and regulatory requirements, and battling the gatekeepers—these responses limit the way he practices medicine. And leave him demoralized. "Part of me likes what I am doing," says Bacall. "It's hard to see myself doing anything different. But I am 45 years old and I feel like a dinosaur. I'm on the top of the list of being extinct."

Levit echoes this sentiment. He says that until six years ago,


The Regulation Game
BATTLE GATEKEEPERS ADVANCE 2 SPACES
YOU HIRED AN ILLEGAL ALIEN GO TO JAIL
HOW DID YOU GET THIS FAR
YOUR LABEL IS NOT APPROVED BY USDA NEW ONE COSTS $40,000
YOU RESEARCH OSHA GUIDELINES ADVANCE 3 SPACES
HIRE PERSON TO HANDLE GOVT. PAPERWORK
ADVANCE 2 SPACES
FAN NOISE

The FDA mandate that all processed foods carry labels describing nutritional value made Standard Candy's packaging obsolete. The company needed new artwork, new printing plates, and a nutritional analysis of its products. Company head James Spradley estimates the cost of re-tooling at over $150,000. It also meant that $250,000 worth of old packaging held in inventory was unusable for sales in the United States.

he never considered patients from a financial point of view and that it's hard to accept the new realities: "Younger doctors won't have as much difficulty adjusting to increased regulation and thinking about remuneration, but I feel outmoded in a way—abused may be a better term—it's hard to learn new habits."

On the other hand, Levit is also more defiant. "Nobody is going to force me out of private practice. I like helping people with vision problems. I want to continue doing it," he says. "I'm going to pay close attention to the rules and learn to work within the system." Does he feel diminished by playing the game? "Of course I do," he snorts.

Bacall says that when his colleagues get together now, the talk focuses on discontents and often runs to retirement—remember, these are people in their 40s—but they feel boxed in. They can't retire gracefully, cutting back their patient load, because the fixed costs of running an office are so high—computers, regulatory compliance, malpractice insurance, and so forth. Bacall, who says he works, on average, 70 hours a week, feels he can't wind down his practice. "I have three children. So far not one of them wants to go into medicine and I'm not unhappy about that. In the last 20 years, there have been so many changes, there isn't the same level of career satisfaction," he says.

Granted, medical doctors are probably feeling unusually touchy these days and not all their complaints are with the government. Some are just reacting negatively to market forces that are reducing their fees and asking them to account for their services. But listen to two other people in what are more traditionally considered small businesses. Again, both are successful and not prone to pessimism and complaint. And, as with most small businesspeople, they are risk-takers who have built a business from the bottom up.

Charlie Palmer has just the kind of history that people are referring to when they talk about the United States as the land of opportunity, and he is just the kind of person that people admire when they talk about the rewards of hard work and talent. Palmer is the owner of one of New York City's best and most fashionable restaurants. He is also a chef with a reputation for innovative American cuisine. And he did it all himself.

Palmer was born in a small town in New York State called Smyrna. During summers and after school he worked in various restaurants, starting as—what else?—a dishwasher. He liked the work just fine, but didn't consider cooking as a career; he thought he would play pro football. (He's a big, fierce-looking guy, at 6 foot 3 inches, 250 pounds.) He didn't actually decide to be a chef until he graduated from high school. He then spent two years at the Culinary Institute in Hyde Park, New York, and came straight to New York City. He rented an apartment in Hell's Kitchen for $50 a month and had his car stolen.

Palmer spent the next several years working at some of New York City's nicer restaurants— like Côte Basque, where he began as a butcher. He also had a bunch of second jobs—like making pastry at La Petite Marmite. By working two jobs, 16 hours a day, he gradually expanded his expertise. And he came to realize that the restaurant business was "strictly a business—the more you put into it, the more you get out of it."

When Palmer finally made his first trip to France, he went right to its gastronomical center, Lyons, and worked in a very famous three-star restaurant. He spent every cent he earned eating at good restaurants. "In France, I really realized what was going on—there, they live for food."

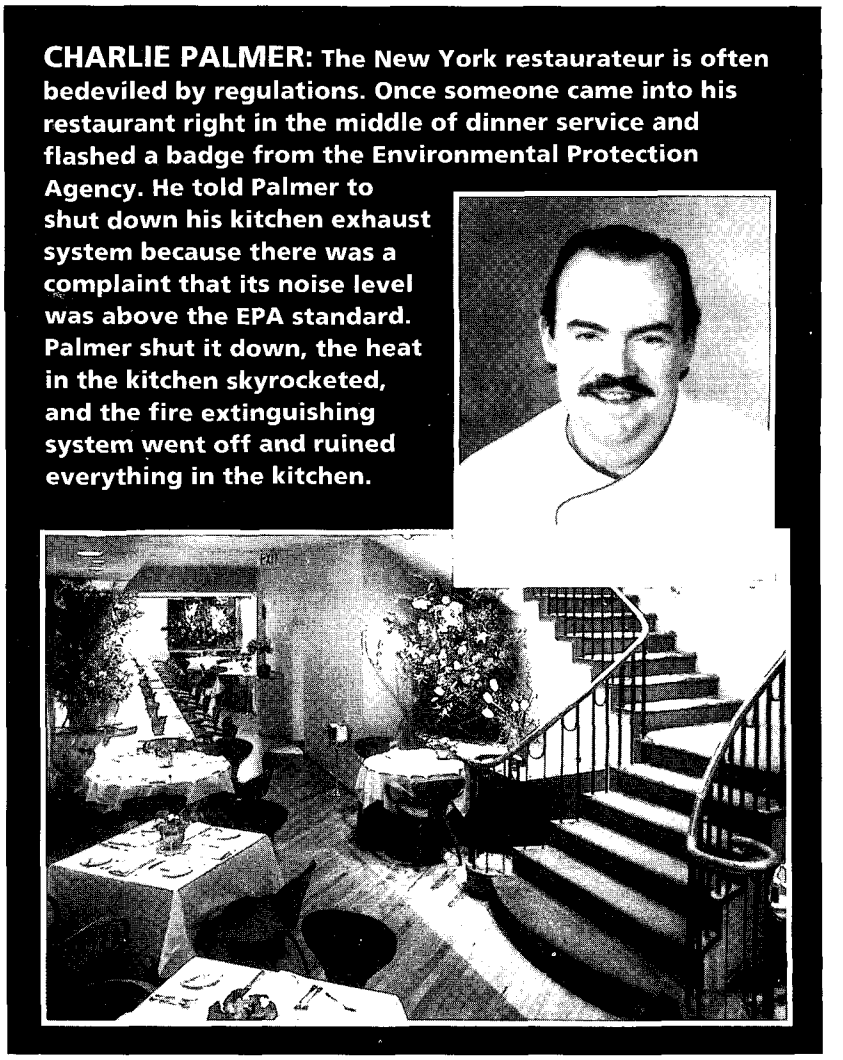
Back in New York City, there was no stopping him. After four years as head chef at The River Cafe, another important restaurant, he was confident that he could be successful as both a businessman and a chef. So, in 1988, along with two partners (whom he later bought out), Palmer started Aureole.

In a city where the experience of eating is as important as eating itself, restaurants are "designed" by professionals. Not for Palmer. "I wanted to choose the way it looked," he says. He chose the neighborhood (Upper East Side), the building (a brownstone), the ambiance (low-key), the place settings (simple), and the flower arrangements (spectacular). "I did sheetwork, I sanded floors, hey! I even did woodwork."

The restaurant, which seats 90–100 people, is open for lunch five days a week, dinner six days. It ain't cheap. The fixed price

lunch is $32; dinner is $59. Palmer employs 68 people, including 21 cooks, maîtres d'hôtels, waiters, cashiers, bartenders, and bookkeepers. Some of them are part-time.

Palmer gives new meaning to the term "hands on," saying: "I am the manager and chef—and dishwasher when somebody doesn't show up." And he is also in the restaurant whenever food is served, taking vacations only when it is closed. During the first two years, Palmer worked from 7 a.m. to 1 a.m.



CHARLIE PALMER: The New York restaurateur is often bedeviled by regulations. Once someone came into his restaurant right in the middle of dinner service and flashed a badge from the Environmental Protection Agency. He told Palmer to shut down his kitchen exhaust system because there was a complaint that its noise level was above the EPA standard. Palmer shut it down, the heat in the kitchen skyrocketed, and the fire extinguishing system went off and ruined everything in the kitchen.

On the day I visited him, he was wrestling with "just another hassle" over a recently purchased creamery in Peekskill, New York. Palmer figured that since this country makes so much dairy produce, it shouldn't be all that difficult to make the best quality butter, cream, and cheese.

The creamery applied to the U.S. Department of Agriculture for all the necessary approvals, got most of them, and then started marketing its cream, butter, chocolate butter, and four types of cheeses to restaurants and specialty food stores. The cream is called "clabberd cream"—an old-fashioned term used by farmers. Three months after the creamery started distribution, the USDA decided to withhold its regulatory approval of the labeling, saying that the word "clabberd" implies the cream was made "in a home."

Palmer was trying to decide what to do, and he was vastly good humored about it. Perhaps that's because that was just the problem du jour—he has been hassled by government regulations from the start. Consider Palmer's most exasperating brush with government regulation: Several years ago, as he tells it, a guy came into the restaurant at 9 p.m., which was right in the middle of dinner service, and flashed a badge from the Environmental Protection Agency. He told Palmer that he would have to shut down his kitchen exhaust system because there was a complaint that its noise level was above the EPA standard. The restaurant was full.

Palmer explained that if he shut off the exhaust system while making 100 dinners, the temperature would rise so fast that the fire extinguishing system—38 jets which spew white fire retardant all over the kitchen—would be set off. The EPA agent said, "Shut it down or I'll arrest you," and called the police. Palmer shut it down, the heat in the kitchen skyrocketed, and the fire extinguishing system went off and ruined everything in the kitchen.

The cops arrived before Palmer could punch the guy out. Instead, he went from table to table, apologizing and explaining that there would be no dinner that night.

Palmer lost $10,000 in dinners, was fined $1,750 for a noise violation, spent $26,000 to correct the violation, and paid about $60,000 in legal fees. He also endured two visits a week from the EPA for the next six months.

What does he make of this experience? Palmer's response is put mildly but his message is discouraging. "Regulations don't promote small business growth. They don't help small business to prosper." Is he happy? "It's better than working for someone else," he says.

And finally there is James Spradley Jr., 39 years old. He looks like the Brooks Brothers notion of a corporate lawyer—sandy hair, square jaw, and glinty eyes. And he does business like a corporate lawyer, hiding a crafty intelligence under a seamless layer of good manners. But he's not a lawyer. Never even thought about it. Spradley runs a candy company in Nashville, Tennessee.

Spradley, who got an M.B.A. from the University of Chicago, always wanted to manage a business. Two years after he graduated, he got his wish when he persuaded his father, a retired businessman, to come in with him and buy the Standard Candy Company. The company wasn't exactly hot. It had sales of $2.5 million from a handful of products, notably something called a Goo-Goo Cluster—a roundish bar of peanuts, marshmallow, caramel, and milk chocolate.

That was in 1982. With very little capital but through what Spradley calls "enormous amounts of energy," the company expanded its products (introducing the Goo Goo Supreme, a cluster

made with pecans instead of peanuts), increased its production, and enlarged its scope. In 1985, Spradley bought another not-so-hot company called Stuckey's—a firm making candy for about 100 roadside shops, mostly in the South, with sales of about $7 million.

When I spoke with him, the combined operations were selling about $35 million annually. Spradley is, obviously, a success. But has his dream come true? Is Spradley managing? "When I graduated from business school, I thought managing a company meant I'd be out selling, doing capital analysis on the purchase of new equipment, managing employees, and developing marketing plans. Instead, half my time is paperwork," he says. While he doesn't blame that directly on government-generated tasks ("I can ask someone else to do it...") he says that regulatory considerations are creeping into every decision he makes.

The firm has to make sure employees are legal. Although he is forbidden to ask potential employees questions based on race, country of origin, or sex, he then has to file papers on all applicants on their race, sex, and national origin. "We are not supposed to ask, but we are supposed to know," Spradley shrugs. Standard is occasionally asked to collect money from an employee by the courts—garnishments for child support, alimony, or payments to a bankruptcy trustee. Failure to handle this paperwork correctly could result in the company being held liable for the entire amount owed by the employee.

As a food manufacturer, the government agency that Spradley mostly deals with is the Food and Drug Administration. He says, "The FDA is not in our face—it just sneaks up and makes us do something we hadn't planned on and costs a lot."

For instance? Nutritional labeling. In 1992, the FDA mandated that by 1994 all processed foods carry labels describing nutritional value, thus making Standard Candy's packaging obsolete. The company needed new artwork, new printing plates, and a nutritional analysis of its products. Spradley estimates the cost of re-tooling, depending on the product, at $4,000 to $10,000—for a total of over $150,000. It also meant that $250,000 worth of old packaging held in inventory was unusable for sales in the United States.

There are also the seemingly endless small irritations. "The FDA is constantly outlawing something so we are constantly having to change ingredients," Spradley says. For example, rules regulating Red Dye #2 have changed three times in six years.

A second, more indirect, source of frustration comes from the U.S. Department of Agriculture. Two major ingredients in Spradley's manufacturing process—peanuts and sugar—are highly regulated by the government. Both must be purchased domestically for domestically marketed products. Fine, except domestic peanuts, some of which are grown under a quota system in which the government guarantees purchase, cost two times more than non-quota peanuts. Ditto for sugar, where the world price is two-thirds of the U.S. price.

Those two artificially high prices, taken together, mean that it costs Standard 15 percent more for raw materials for the U.S. market than it does for exports to Mexico and Europe where non-quota peanuts and non-U.S. sugar are used. "We pass the increased cost on to our customers," says Spradley, "but the whole exercise is exasperating and requires a significant amount of record keeping."

JAMES SPRADLEY: **Although the candy maker is forbidden to ask potential employees questions based on race, country of origin, or sex, he then has to file papers on all applicants on their race, sex, and national origin. "We are not supposed to ask, but we are supposed to know," Spradley shrugs.**

And then there is just the plain old exasperation over good-hearted government regulations that can have hard-hearted impact. Under the Americans with Disabilities Act, Standard's plants are required to lower the curbs to accommodate people in wheelchairs. Fine. But as Spradley points out, "This is a good thing for people in wheelchairs, but it is heck on blind people who trip when they can't find a raised curb."

Spradley displays a characteristic businessperson's split personality. On the one hand he feels that increasing government interference in the marketplace will "soon make the United States as unproductive as France or Germany," but about his own business, he is optimistic. He has two daughters. He hopes that someday both will run the Standard Candy Co.

All four of these businesspeople are coping, to be sure. Each understands that the goals of many regulations are desirable—whether they are to set high standards, ensure safe conditions, enhance the quality of life, or provide equal opportunity. Unfortunately, however, in trying to achieve those goals, regulation has proved ham-handed and heavy-footed.

Indeed, government regulation is invidious: It dampens productivity, saps innovation, damages business investment, creates uncertainty, costs a lot of money, promotes frustration, supports two insufferable groups—lawyers and bureaucrats—and drives otherwise sensible people mad.

Unfortunately, despite the 1994 congressional election, where the single, overwhelming result of exit polls demonstrated that voters are fed up with big, expensive, and intrusive government, congressional will has been weak. For example, a House bill to require that new federal regulations costing more than $25 million be submitted to cost-benefit analysis faltered when the Senate failed to pass its own version.

And that leaves us all holding the bag. ®

Susan Lee (sclee12@aol.com) is an economist. This article is adapted from her book, Hands Off: Why the Government is a Menace to Economic Health. *Copyright © by Susan Lee. To be published in April by Simon & Schuster.*

RETIREMENT PLANS

The untold story of the budget battle: Because "Mediscare" hasn't worked, privatizing Social Security has become possible. Here's how things might shape up.

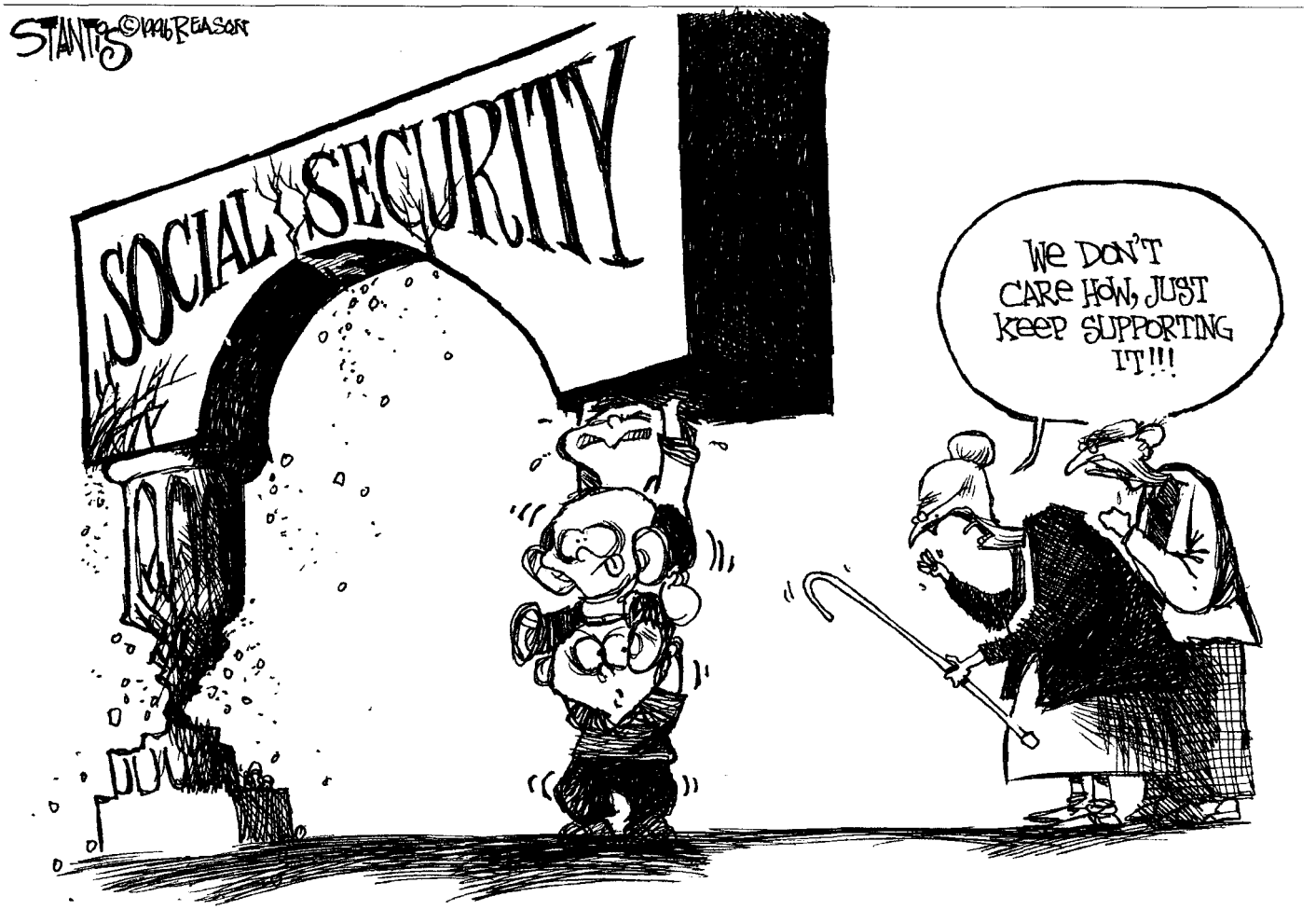
By Rick Henderson

Forget the acrimonious Beltway budget debate. Ignore the hysterics ginned up by the Democrat/union/seniors' lobbies over "extremist" Republican measures that would slash programs protecting "the elderly," "children," and "the environment." Something important has happened amid the screaming and the showdowns: Both political parties have agreed to put Medicare on an annual budget, ending its open-ended status.

The GOP's seven-year balanced-budget plan would get $270 billion of its budget savings—nearly one-third of the $815 billion the Republicans require—from reductions in projected Medicare spending. The White House initially countered with a proposal that would save $192 billion from Medicare over that seven-year period. All the Democrats' histrionics were based on a difference of $11 billion a year. You might find that much in loose change between the sofa cushions at the Department of Health and Human Services.

Before this year, had either political party proposed similar reductions in Medicare, the American Association of Retired Persons would have shut down the Capitol switchboard, led sit-ins at federal buildings, or asked its members to handcuff themselves to their representatives' desks. Weak-kneed politicians could have sought solace from welfare-state advocates on the left and right. After all, as recently as June of 1993, neoconservative icon Irving Kristol was chastising conservatives for attacking federal retirement programs. Writing in *The Wall Street Journal*, Kristol said "traditional conservative fiscal monomania" about entitlements "leads to political impotence and a bankrupt social policy....If the American people want to be generous to their elderly, even to the point of some extravagance, I think it is very nice of them."

Now all that's changed. Perhaps it's becoming possible



SCOTT STANTIS

(without ducking for cover) to publicly discuss major reductions in entitlements, which were believed to be the "third rail" of American politics as recently as a few months ago. As National Center for Policy Analysis President John Goodman points out, "The Republicans touched the third rail with [their Medicare reforms]. And nothing happened."

No matter how or when the current budget dispute works itself out, the failure of a few advocacy groups to use "Mediscare" tactics to cower wavering legislators bodes well for reforming Social Security, the 800-pound gorilla of retirement programs. Milton Friedman first suggested privatizing Social Security in 1962—a proposal that for two decades had few adherents outside of libertarian and other free market circles. More recently, however, advocates of privatization have been heartened as several dozen nations, including Great Britain, Chile, and Singapore have at least partially privatized their retirement programs. Goodman echoes the attitude of entitlement watchers from free market and deficit-fighting groups when he says, "By the end of this decade, I think we'll see a national consensus among Democrats and Republicans that something needs to be done about entitlement programs for the elderly in this country. And by something, I mean major privatization."

In 1950 there were 16 workers for every Social Security recipient. Now there are 3.3, and it's projected that there will be fewer than two workers for every recipient by 2030. And as the baby boomers retire, the number of Americans older than 70 is expected to double, from 24.1 million today to nearly 48 million in 2030.

It's no secret that Social Security is a fiscal time bomb, but those facts bear repeating. While 65 has been the Social Security retirement age since 1935, average life expectancy for 65-year-olds has increased from about 13 years in 1935 to 17.5 years today. By 2040, 65-year-olds are expected to live another 20 years. In 1950 there were 16 workers for every Social Security recipient. Now there are 3.3, and it's projected that there will be fewer than two workers for every recipient by 2030. And as the baby boomers retire, the number of Americans older than 70 is expected to double, from 24.1 million today to nearly 48 million in 2030.

Social Security now runs annual surpluses of about $50 billion. But those boomers will soon prevent Social Security from paying its own way. Sometime around 2010, the program will have to finance some of its benefits from general tax revenue, and those subsidies will have to increase continuously. To keep Social Security from dipping into the general treasury, between now and 2030 payroll tax rates would have to increase from the current 11.2 percent to nearly 20 percent.

This sobering news has helped temporarily deaden the currents on the third rail. For more than a decade, a majority of opinion-poll respondents have doubted that they would receive enough benefits from Social Security to finance their retirements. Over the past four years skepticism about Social Security's future has intensified. In a March 1994 Gallup poll, for instance, 46 percent of those surveyed strongly agreed that taxes would have to be raised "dramatically" to pay Social Security benefits in the future; 74 percent said most people could get more money investing their payroll taxes privately rather than relying on Social Security; and 71 percent expected to get less out of Social Security at retirement than they put in during their working years.

In November 1995, a poll conducted by the Charlotte, North Carolina–based polling firm GrassRoots Research, found even stronger doubts about Social Security's future. When asked what changes, if any, the respondents would make to Social Security, only 24 percent would leave the program alone; nearly as many (22 percent) would make Social Security completely voluntary; another 29 percent would either raise the retirement age or cut cost-of-living increases for current retirees.

This skepticism has no doubt been fueled by the willingness of prominent individuals and organizations to harp on Social Security's long-term troubles. During the 1992 presidential campaign, former Massachusetts Sen. Paul Tsongas lectured Democrats about the possible collapse of the program. Since then, the Perot voters' obsession with deficit reduction, the Tsongas-founded Concord Coalition's focus on the entitlement time bomb, and the 1994 Bipartisan Commission on Entitlement and Tax Reform's widely reported findings that entitlement programs are the major source of the federal deficit have made it possible to suggest substantive reforms of retirement programs in polite company.

In addition, says Concord Coalition Legislative Director Demetri Coupenas, "People are becoming more cynical about government. We think cynicism is unfortunate in general, but it's fortunate for [moving the debate] on this issue." Scott Rasmussen, president of GrassRoots Research, notes that confidence in government has eroded dramatically since Franklin Roosevelt first proposed Social Security. "In the 1930s," Rasmussen says, "we were in the middle of the Depression. People didn't have any confidence in the private sector. Now people don't trust government any more. They would rather have their Social Security money invested privately."

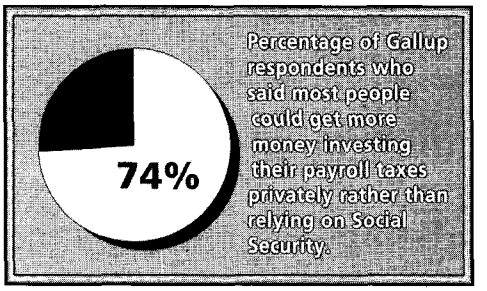
Advocates of privatization in the United States can also look to other countries that have started reforming their retirement programs. An October 1995 NCPA study co-authored by Goodman, Peter Ferrara, and Merril Matthews lists more than 40 nations that incorporate some private component as part of their "public" retirement programs. In Singapore, for instance, the forced-savings plan incorporates retirement investments along with savings for home ownership and medical care. South Korea, Germany, and Ireland are but a few of the countries that let the self-employed opt out of the government retirement program.

And this year New Zealand will have its first parliament elected not in single-member districts but under a scheme of pro-

portional representation. A new political party expected to lead a center-right coalition there, the Association of Consumers and Taxpayers, has made social security privatization one of its four platform planks. Republican activist Grover Norquist, who is advising the ACT, believes success in New Zealand could help reformers in the United States. "New Zealand is an English-speaking, democratic nation," says Norquist, "not a former dictatorship" like Chile, which privatized its social security program 15 years ago. If privatizing old-age entitlements can becomes a winning issue in a Western-style democracy like New Zealand, Norquist asks, why not here?

While there's hope for sweeping changes in Social Security, reformers still have some tough rows to hoe. The AARP, labor unions, and other defenders of the welfare state will remain political impediments to change. And along with winning electoral battles, reformers must satisfy three constituencies with different demands: younger workers who may face crippling payroll taxes as their parents retire; people at or near retirement age, who expect to receive the benefits promised to them; and those in between, who fear they may pay much higher taxes and still get little in return when they retire.

Privatizing Social Security isn't merely a matter of fiscal responsibility, an issue (as Irving Kristol wrote in the *Journal*) only for those "whose Good Book is the annual budget." The current system discourages thrift, encourages dependency, and, yes, even undermines families by breaking the economic bonds between generations. And it is based on a lie: that retirees are simply collecting money they "paid in." There is, of course, no real economic relation between the taxes working people pay and the benefits they collect as retirees. Both are simply set politically, giving all retirees a vested interest in the welfare state. Freeing Americans from dependence on Social Security would change that, giving tens of millions of people control of their own destinies. As investors in private retirement plans, each would have a stake in the success of the American economy. National Development Council Chairman Sam Beard, who has devised a privatization proposal, speaks of creating "minimum-wage millionaires."


74%
Percentage of Gallup respondents who said most people could get more money investing their payroll taxes privately rather than relying on Social Security.

Fortunately, there's no shortage of reform proposals circulating among policy groups and on Capitol Hill. "Everybody's got his own plan," says Ferrara, general counsel at Americans for Tax Reform, who has written dozens of books, studies, and articles about Social Security reform. "I can't keep up with all of them."

None of the reform plans under consideration would make Social Security voluntary and let individuals withdraw from the system by renouncing any benefits they might receive. Instead the proposals are all variations on forced savings plans; some rely more on private savings than others. The plans coalesce around two models:

■ **The two-tiered approach.** These proposals deal with obligations to current and soon-to-be retirees by directing most payroll taxes either into traditional Social Security or into tightly regulated private investments. Younger workers, however, could invest some of their payroll taxes into higher-risk, potentially higher-yield, Individual Retirement Accounts. Proponents of this approach assume that payroll taxes from the work force will perpetually support current retirees.

The first legislative proposal along those lines was initially offered by Rep. John Edward Porter (R-Ill.) in 1989, and re-introduced in slightly varied forms since then. Since only about three-fourths of Social Security payroll taxes are spent on benefits for current retirees, Porter's plan would let workers invest most of their "surplus" payroll taxes privately. Specifically, the Porter proposal would cut the 11.2 percent Social Security payroll tax by two percentage points, let workers set up Individual Social Security Retirement Accounts, and invest the 2 percent tax in a limited number of mutual funds or other retirement vehicles. Workers would have a property right in their ISSRAs, and those who set up ISSRAs would reduce their claims to tax-funded benefits by the amount their Social Security taxes were reduced.

Along similar lines, last year Sens. Bob Kerrey (D-Nebr.), head of the entitlement commission, and Alan Simpson (R-Wyo.), a member of the commission, made a more detailed proposal. Among other things, the Kerrey-Simpson plan would increase the retirement age from 67 to 70 over 35 years, reduce the formula for Social Security cost-of-living increases, and force workers to invest two percentage points of their payroll taxes privately. (It would, however, also allow Social Security's trustees to invest as much as 25 percent of the $480-billion Social Security trust fund in commercial stocks and bonds—a sure legislative nonstarter. "Great," quips the NCPA's Goodman. "Let's have the government [buy up] a bunch of private businesses.")

Advocates of the two-tiered approach have a real-world example to look at: Great Britain. In what Peter Ferrara calls "one of the unreported stories" about entitlement reform, "70 percent of British workers have opted out of the state retirement plan." Since 1978, British workers' payroll taxes have gone to finance two retirement programs: a basic benefit that's roughly equal to 18 percent of the mean national income, and a second benefit. Workers can choose where their second-tier payroll taxes go: to fund a government pension that will pay at least twice the basic benefit or to a private pension that is operated by their employers. The NCPA report on private social security options in other countries says about 45 percent of British workers have contracted out of the state pension plan and invested in employer pensions.

Beginning in 1988, the British government gave workers a third option for their second-tier payroll taxes: tax-deferred individual retirement accounts. Individuals who choose this option can supplement their individual accounts with additional tax-deferred contributions. About 25 percent of British workers have chosen the personal retirement option over state or employer pensions.

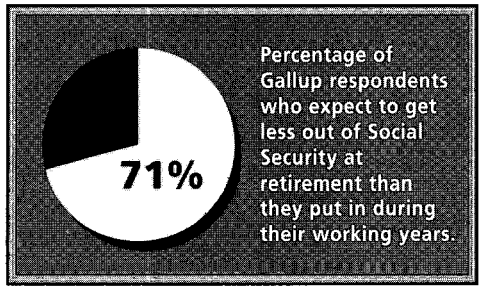
Several private groups are pushing variations *of the British*

plan. The National Development Council's Sam Beard has outlined his own plan to create "100 million millionaires." In his proposal, to be published in book form by the Institute for Contemporary Studies, the first $500 of payroll taxes each employee and employer pay would go into an individual retirement account instead of to the government, for a total nest egg of $1,000 a year. Beard would also let individuals add as much as $2,000 a year to their accounts—up to $1,000 in personal savings, matched dollar-for-dollar by shifting payroll taxes into the IRA.

From Beard's formula, a person earning $50,000 a year who wanted to max out her IRA would invest $1,500 from payroll taxes. A $10,000-a-year earner who pays $1,240 a year in payroll taxes could max out by adding $120 in voluntary contributions to the $500 that would automatically go into the IRA. Beard says that, over a 45-year working career, a $10,000-a-year worker investing $1,240 at 8 percent would accumulate a portfolio worth $1,026,524, making our minimum-wage worker a millionaire. (Workers who pay more than $3,000 a year in Social Security taxes couldn't invest all of their payroll taxes privately; benefits for current retirees would come from the payroll taxes these higher-wage workers pay.)

Beard has established Equal Capital Opportunity Now, a Concord Coalition–like group to push his plan. ECON's public-relations efforts are geared at those at or near college age—the group most likely to believe they will receive no Social Security benefits at retirement. Two twentysomething organizers, Jonathan Abshire and Beard's daughter, Hillary, are approaching the Concord Coalition, other deficit-fighting organizations, local Perot activists, and groups on college campuses, hoping to focus attention on Social Security among younger people in a "Now Do You Care?" day in April.

And even as political operatives in the White House were trying to whip seniors into a frenzy with their Mediscare campaign, a panel appointed by Health and Human Services Secretary Donna Shalala almost endorsed a British-style, two-tiered Social Security system. The 13-member Advisory Council on Social Security, which has advised every president since Franklin Roosevelt, considered three options for Social Security reforms: Maintain the current benefit structure, increasing payroll taxes as necessary to pay retirees; raise payroll taxes by two percentage points and let everyone invest the extra money in IRAs; or establish a two-tiered system that allows even more private investment. Under this third option, workers younger than 30 could invest five percentage points of their payroll taxes in any private investment vehicle that meets the financial and reporting standards of the typical 401(k) plan. They would also get a tax-funded retirement benefit that would vary with their tax contributions. Those older than 55 would continue to get traditional Social Security but might see the retirement age rise. Those between 30 and 55 would receive a hybrid of the privatized/tax-funded system.


71%
Percentage of Gallup respondents who expect to get less out of Social Security at retirement than they put in during their working years.

When the council made its final recommendations, five of the 13 presumably Clinton-friendly advisers voted for the two-tiered plan. Two others supported the 2-percent IRA plan. A commission insider was pleasantly surprised that seven of the 13 members sympathized with some form of privatization. "Most [on the panel] believe there needed to be some direct investment of payroll taxes in the private sector," the insider says. But the more market-oriented advisers would embrace neither having the federal government directly invest Social Security trust funds in the private sector nor establishing government-managed "private" retirement-investment vehicles. The advisory council's support for this two-tiered proposal indicates how mainstream previously "radical" views on Social Security have become.

■ **The stock-and-bond option.** The two-tiered proposals offer individuals a partial property right in their payroll taxes and guarantee a stream of money to pay benefits to future retirees. But because they continue Social Security's pay-as-you-go funding, these plans also contain a potentially serious flaw: If some future generation of retirees puts the heat on Congress to increase Social Security benefits, Congress can merely ratchet up the payroll-tax rate.

Another set of reforms could circumvent this possibility. Based on the Chilean social security program, these reforms would let workers either remain with the current system or invest all of their payroll taxes in private accounts. The government would also create a new debt instrument that would let all workers who have paid Social Security taxes get at least some of their money back.

Chile began privatizing its social security system in 1981. Until 1986, workers had the option of remaining in the government retirement system or entering a private pension program. (As of 1986, all new workers must enter the private plan.) In the private system, each worker must invest 10 percent of his wages in a tax-deferred, portable individual savings account and can add as much as 10 percent more of his wages to the account monthly. The government has authorized 21 pension funds to manage and invest money in the individual accounts. Workers must invest in one of the funds, but they can change funds as frequently as every month.

At retirement, workers can use their accounts to purchase an annuity or they can let the account continue to build value, making periodic withdrawals as needed. The government does guarantee a minimum benefit that's based on the minimum wage. If a pension account can't cover that benefit, the difference is made up out of general revenue.

The NCPA report authored by Goodman, Ferrara, and Matthews reports astounding results. The funds have earned, on average, a 13 percent rate of return above inflation, and the national savings rate now exceeds 25 percent. And even though payroll taxes are 60 percent lower now than they were before 1981, retirement benefits under the private system are 70 percent higher in real terms than those the government plan offered.

What about those workers nearing retirement who have paid payroll taxes for years in the now-shrinking government system,

an unfunded liability of nearly $7 trillion in the United States? The Chileans established a new debt instrument, known as recognition bonds. These are interest-bearing bonds of amounts that vary with how much each individual had put into the old system. The value of the bond is added to each person's individual account at retirement.

Goodman and Ferrara, among others, have cited some problems with the Chilean approach—most notably the rather strict government regulations on how people can invest their retirement savings. But the overall outline has gained adherents on and off Capitol Hill. When freshman Rep. Mark Sanford (R-S.C.) visited Chile on a trade mission in 1995, he returned singing the praises of its social security plan. While he hasn't recommended a proposal along the lines of the Chilean program, he remains interested in major Social Security reforms.

Former Sen. Malcolm Wallop (R-Wyo.), a member of the entitlement commission and chairman of Frontiers of Freedom, is pushing reforms along the Chilean outline, emphasizing the establishment of a property right for workers' retirement contributions and suggesting the sale of federal lands and other assets to finance the recognition bonds. And Ferrara, who had previously pushed a two-tiered system, now prefers a stock-and-bond approach. He is developing (but has not yet completed) his own proposal for the Cato Institute. Two advantages Ferrara sees in the Chilean approach are that it gives individuals control over their own retirement investments and that the recognition bonds "let people get some of their money back."

The potential weakness of the Chilean approach is political: It doesn't offer a stream of tax dollars to pay for current retirees and those near retirement age—a tough sell to people older than 50. University of Nebraska economist Karl Borden has proposed a detailed hybrid plan that could offset some of this political opposition by offering some of the strongest features of both approaches. Outlined in a Cato Institute paper, Borden's plan would let workers stay in the current system, with the understanding that their benefits could be reduced, or join the private system. The private plan would invest all payroll taxes in tax-deferred personal retirement accounts. Individuals could also add as much as 25 percent of their incomes a year into these PRAs, which would then be used to purchase stocks, bonds, or mutual funds.

PRA funds would be divided into "basic" and "enhanced" accounts. Money would accumulate in the basic account until the account could purchase an annuity that would provide 110 percent of an annual minimum-wage income through retirement. The basic account could only be invested in a limited number of "safe" investments. After accumulating that amount, the rest of the PRA could be invested in any financial security.

Even the Advisory Council on Social Security, which has advised every president since Franklin Roosevelt, is considering privatization of Social Security. If Democrats open with a mild privatization proposal, Republicans could raise the stakes. Once debate focuses on which privatized plan to adopt, the free-marketeers will have won.

Borden's plan would also establish a recognition bond based on the present value of the estimated retirement benefit the Social Security Administration calculates for every worker today. Each person would get a bond, which would be deposited in your PRA. Bond holders could wait and hope that there will be enough money in the treasury to redeem their bonds when they mature, or they could sell the bonds on secondary markets. If confidence in the government's solvency is low, people might only get a few cents on the dollar for their bonds. But something beats nothing. The Borden proposal may be too complicated to sell politically. But others will no doubt emerge.

ATR's Grover Norquist has mapped out a possible timetable for privatization. He's urging Republicans to drive a stake through the heart of Washington's social engineers by making a flat income tax the campaign issue of 1996. If the GOP wins the White House and increases its majorities in Congress, he says, the party can spend 1997 on tax and regulatory reform. After the 1998 mid-term elections (in which he predicts even bigger Republican majorities), the Republicans could then turn to Social Security in 1999.

An overly ambitious scenario? Perhaps. But even if Clinton is re-elected, ATR's Jim Lucier thinks the move towards privatization will continue. After all, the most prominent advocate of partial privatization is former Democratic presidential candidate Kerrey. And he's not alone in his party: At a Concord Coalition-sponsored "entitlement summit" in Fresno last August, Rep. Cal Dooley (D-Calif.) suggested converting Social Security into a genuine social-insurance program. People purchase insurance to protect themselves from unexpected events, he said. Living until retirement age is something people expect to do. Dooley suggested at least partially privatizing the retirement portion of Social Security's old-age and disability program, which amounts to 11.2 percentage points of the 12.4 percent payroll tax.

As a lame duck, Clinton might embrace a proposal along the lines of the Kerrey plan. If Democrats open with a mild privatization proposal, Republicans could easily raise the stakes. Once the policy debate focuses on which privatized plan to adopt, Goodman says the free-marketeers will have won. "Once there's a broad consensus about privatization," he says, "you can argue over the details."

The Concord Coalition's Coupenas says there's no time like the present to start this debate. "If it does take five or six years" to implement reforms, he says, "who knows what other problems we may face?" A recession, war, or other financial troubles could derail entitlement reforms. "The longer we wait," he says, "the tougher it is to solve the problem." R

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Second Reading

Treating the Second Amendment as normal constitutional law

By Daniel D. Polsby

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.
>
> United States Constitution
> Second Article of Amendment
> December 30, 1791

It has not been long since the Second Amendment moldered in the torpid backwaters of constitutional law studies. Swollen with materials pertaining to the Equal Protection Clause and the First Amendment, the leading law school casebooks of the 1960s, '70s, and '80s had little or nothing to say about the right of the people to keep and bear arms. Indeed, most such books had not so much as an index entry on the subject. In the entire 20th century the Supreme Court has not decided a single case concerning the states' power to regulate firearms, and in the past generation's political debates about gun control legislation, the Second Amendment has played a marginal and, one must say, somewhat abject role. It has been waved talismanically by the (usually) losing side (consisting of firearms enthusiasts), who sense an "abridgment" of their "rights" in any firearms regulation, and scoffed at by the winning side (anti-gun advocacy groups and their allies in government), who argue that by its very terms, the Second Amendment guarantees only the rights of states to have well-regulated militias, and not the right of individuals to have firearms. There is, then, (say the winners) no constitutional reason for society to put up with high rates of suicide, accidents, and lethal criminal violence caused by the too-easy availability of guns, especially when those problems can be curtailed by making firearms harder and harder to come by, if not downright impossible for private citizens to obtain legally.

Hunters, target-shooters, and gun collectors have always been great devotees of the Second Amendment, and until quite recently by far the majority of writing on the subject was to be found in magazines dealing with outdoor recreation, hunting and fishing, or firearms hobbies. This writing often contains interesting anecdotes about people using guns to defend themselves from animals or criminals, and one sometimes finds references to or quotations from the thought of the illustrious men of the Founders' generation, especially Madison and Jefferson. Generally speaking, though, it must be said that even among enthusiasts who think about the Second Amendment quite a lot, there has been little appreciation for the intricate and nuanced way in which constitutional analysis is practiced, and has to be practiced, by judges and lawyers.

For the legal profession, constitutional text, history, precedent, and matters of expediency are all important, and no one provision of the Constitution is to be seized upon without due recognition of its context in the Constitution as a whole, and for the strands of doctrine that the Supreme Court has elaborated over the years to translate the words of the document into the actions of the government. The "freedom of speech and the press" that journalists habitually ascribe to the Founding Fathers is more aptly attributed to Supreme Court Justices Oliver Wendell Holmes Jr. and Louis D. Brandeis, whose opinions in a series of cases in the 1910s and '20s gave a modern form to the question of how "the freedom of speech" differs from "speech" *simpliciter* and what the limits of that freedom might be. Similarly, one might well say that the First Amendment's freedom of religion, such as it is, was for all practical purposes invented in the 1940s by Justices William O. Douglas, Robert Jackson, and Hugo Black and in the 1950s and '60s by Justice William Brennan.

This is a game in which the Second Amendment has never really played. It's true that there was little occasion for litigation prior to the late 1960s, because until then governments at every level did little to regulate firearms. Yet even in the years since the federal Gun Control Act of 1968, when gun restrictions of various kinds began to proliferate, courts and scholars were quite content to allow politics to take its course without reflecting on what the Constitution might have to say about the role of private firearms in American life. The fact that the Second Amendment found no champion among policy-making elites surely tells more about the social psychology of the class from which lawyers and social scientists are drawn than it does about the Constitution's text and structure. The modern American legal profession especially has been thoroughly acculturated to Max Weber's conception of the modern state as the monopolist of all legitimate force—a principle in undeniable tension with the private keeping of arms for self-defense.

But the Second Amendment's era of marginality may well be ending. In the law journals if not yet in media of mass circulation, the Second Amendment has captured the attention of scholars, including some of the most eminent and respectable in the field, who find, somewhat to their own surprise as they reflect upon the matter for the first time, that the private right to keep and bear arms is very much in character with the Bill of Rights as a whole and with the thinking of the Framers of the Constitution.

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Despite its renaissance in the law reviews, however, it must be said that in practice the Second Amendment has not yet acquired full membership in the league of serious constitutional rights. Plaintiffs who go to court to overturn firearms restrictions usually prefer not to base their cases on Second Amendment arguments. An example is the litigation testing the validity of the 1993 Brady Law. The (eventually unsuccessful) challenge to this law was not based on the Second Amendment at all, but on the 10th Amendment claim that the federal government should not be allowed to oblige state officials to do (more or less costly) background checks on handgun buyers. The lawyers who bring these cases appreciate (as their fiery clients usually do not) that lower courts at least are unlikely to dispute the right of legislatures at any level of government strictly to regulate most varieties of firearms, up to and including prohibiting their sale and ownership altogether. Partly this response is simply routine deference to legislative prerogatives. Courts generally endeavor to uphold legislative decisions rather than undermine them. But in this instance judicial deference is more than routine, because, as Duke law professor William Van Alstyne has written, Supreme Court cases interpreting the Second Amendment are, for all practical purposes, missing in action. There simply is no modern jurisprudence that explains to judges the meaning of "the right to keep and bear arms" and the scope of their authority to decide that a given piece of legislation constitutes an infringement of that right. If ever there was a situation designed to play on the inherent timidity of lower-court judges, this is it.

A single example will suffice to show how decisive the virtual absence of interpretative precedents can be. In 1981 the trustees of a tiny bedroom suburb of Chicago enacted an ordinance forbidding the private possession of handguns within the village limits. The law was immediately challenged in federal district court on a Second Amendment theory (among other grounds). In due course the U.S. Court of Appeals for the Seventh Circuit received the case, known as *Quilici v. Village of Morton Grove,* and upheld the law, finding that there was no authentic Second Amendment issue raised by the case. It cited as authority the most recent Supreme Court pronouncement on the subject, *Presser v. Illinois*, decided in 1886, many years before the "incorporation" doctrine was conceived. In the 19th century it was conventionally said that the Bill of Rights constrained only national and not state government. A few years before *Presser*, for example, the Supreme Court clearly

held (in *United States v. Cruikshank)* that neither the Second Amendment *nor the First* creates any individual rights that a state government need respect. The Court, of course, has long since repudiated this principle; beginning in the 1930s, it applied ("incorporated") one provision of the Bill of Rights after another to limit the authority of the states. But it has never done so with respect to the Second Amendment, leaving an opening for *Quillici*-type decisions.

Second Amendment enthusiasts are understandably eager to see this anomaly corrected. Nevertheless, there is reason not to jump at every perceived legislative affront with a new lawsuit. The procedural posture of a case—especially a novel case—can matter enormously to its outcome. To maximize one's chance of winning, it is important to align one's case with legislation rather than against it. Congress has power under Section 5 of the 14th Amendment to define and protect substantive due process rights from state encroachment. Suppose Congress enacted that the right to bear arms is an individual right that (along with the rest of the Bill of Rights) is "incorporated," so as to be fully applicable against the states, and suppose the gun control law of some state—say, New York—infringed upon that right. In the resulting litigation, the always-tilted playing field would for a change favor the Second Amendment. Instead of remaining in the Supreme Court's dead-letter office, the Second Amendment would move to the status of normal constitutional law.

Normal constitutional argument begins with text. The first question to consider, then, is: What does the Constitution say about the right to keep and bear arms? There seem to be two main theories of what sense is conveyed by the language of the Second Amendment. The theory that is most often encountered by the intelligent lay public reads the words to say something like: "In order to make themselves secure, states have a right to have a well regulated militia, and Congress may not restrict state regulation of militia members' weapons." This is approximately the interpretation favored by most major newspapers' editorial writers, by gun control groups, and by a broad swath of conventional public opinion, running the partisan gamut from left (e.g., Rep. Charles Schumer of New York) to right (e.g., President Nixon) and most political shades in between.

But in places where close attention is paid to what words actually say, the states'-rights reading of the Second Amendment has attracted surprisingly little support. After all, the Second Amendment does not say, "A well regulated militia, being necessary to the security of a free state, shall not be infringed." Nor do the words of the amendment assert that "the right of the people to keep and bear arms" is conditional upon membership in some sort of organized soldiery like the National Guard. Indeed, if there is conditional language in the Second Amendment at all, evidently the contingency runs the other way: "Because the people have a right to keep and bear arms, states will be assured of the well regulated militias that are necessary for their security." Some version of this reading is supported by almost all of the constitutional historians and lawyers who have published research on the subject. Indeed, this view is so dominant in the academy that Garry Wills, the lone dissenter among historians on the proper reading of "the right of the people to keep and bear arms," has dubbed it the Standard Model of the Second Amendment.

Are these textual arguments dispositive? In some (increasingly rare) instances, lawyers are prepared simply to read what the Constitution says and end the conversation at that point. For example, if some question arose about the eligibility of a person who had not "attained to the age of thirty-five years" to serve as president, most lawyers would probably be content simply to follow the command of Article II, Section 1 rather than attempt to penetrate to the deeper meaning the clause must surely have.

But a number of scholars, including some friendly to a broad reading of the Second Amendment like Van Alstyne and University of Texas law professor Sanford Levinson, agree that the Second Amendment is so obscurely drafted as almost to invite confusion and misunderstanding. Where text is inadequate standing alone, one needs historical tools to explain what the provision's language actually meant. And even lawyers who, like me, do not find the draftsmanship all that confusing recognize that arguments, especially arguments about "the right of the people to keep and bear arms" that have become politically incorrect as the 20th century draws to a close, will acquire extra cogency by pointing out that the Founding Fathers of our country are at one's side. Whether or not the meaning of the text seems clear, it is always helpful to adduce evidence of how the drafters of the Bill of Rights would have understood a particular provision's language.

Unhappily, in many cases, including some of the most vexing, such evidence is unavailable. We can only extrapolate and conjecture about how the Founders would have understood the First Amendment's "freedom of the press" to apply to the Playboy Channel, or how the "search and seizure" language of the Fourth Amendment would have been thought to bear on overheard cellular telephone calls. But no ambiguity at all surrounds the attitude of the constitutional generation concerning "the right of the people to keep and bear arms." To put the matter bluntly, the Founders of the United States were what we would nowadays call gun nuts. "One loves to possess arms," Thomas Jefferson wrote to President Washington (whose own gun collection, Don Kates notes, contained more than 50 specimens). And to his teenage nephew, the author of the Declaration of Independence had this to say: "A strong body makes the mind strong. As to the species of exercises, I advise the gun. While this gives a moderate exercise to the body, it gives boldness, enterprise and independence to the

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mind. Games played with the ball, and others of that nature, are too violent for the body and stamp no character on the mind. Let your gun therefore be the constant companion of your walks."

Addressing Virginia's constitutional ratification convention with characteristic exorbitance, Anti-Federalist icon Patrick Henry declared that "the great object is that every man be armed....Everyone who is able may have a gun." And James Madison, author of the Bill of Rights, recognized "the advantage of being armed, which the Americans possess over the people of almost every other nation," whose tyrannical governments are "afraid to trust the people with arms."

There are at least scores of contemporaneous expressions of similar import. But if one is trying to fathom whether or not the Second Amendment recognizes an individual right, perhaps the most significant fragment of history is this: The idea that the Second Amendment guarantees a collective but not an individual right originated in the 20th century with gun control groups and politicians. The theory was simply unknown at the time of the Constitution's drafting and for more than a century thereafter. (There were anti-gun ideologues in 18th-century America, but these were the Quakers, who rejected the use of arms by anyone, individuals and communities alike.) The "collective rights" theory seems to have flowered in the 1960s or '70s as a prop in national political debates about gun control laws. The most famous and widely cited argument for this position appeared in *Parade* magazine in 1990, ostensibly authored by former Chief Justice Warren E. Burger, a judge not famous then or now as a constitutional authority and whose 30-year judicial career had in any case included not a single Second Amendment decision.

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Akhil Amar of Yale Law School has famously argued that the Bill of Rights can and should be read as a coherent document, rather than as a grab bag of snippets and special pleadings. Taken as a whole, Amar argues, the Bill of Rights is a sort of constitution that embodies a consistent theory, not only about the moral personality of human beings but also about the state and especially its lawless tendencies under the stress and strain of political conflict. In connection with the Second Amendment, this approach has special attractions, because the basic interpretative questions concerning the Second Amendment—what is the "right" and when is it "abridged"?—do not have any specifically "Second Amendment" answers. But if the Bill of Rights is taken as a congruous and interconnected whole, it might be possible to begin the analysis by piggybacking on the fairly deep jurisprudence of constitutional rights that has developed in connection with other amendments.

To begin with, as Amar and others have pointed out, keeping and bearing arms is not the only "right of the people" mentioned in the Bill of Rights. The First Amendment forbids Congress to abridge the "right of the people" peaceably to assemble; the Fourth Amendment forbids violation of the "right of the people" to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. The right to keep and bear arms, then, should probably be understood as cognate in some way to those rights—surely in the sense that it is possessed by individuals as those other rights are, and also in the sense that, like those other rights, the right to keep and bear arms is in some way fundamental to the preservation of republican citizenship.

It is beyond all rational doubt that this understanding reflects the view of the Founders. They took from Locke the principle that people have a right to defend themselves, with arms if necessary, and from both Hobbes and Locke—to say nothing of their own experience with the Crown—the principle that central governments have a tendency, which requires systematic mitigation, to become overmighty with those subject to their power. The purpose of an armed population was to guarantee that the central government could *not* possess a monopoly of violence (no wonder modern-day liberals find the Second Amendment so hateful) and to assure that citizens would have the wherewithal to defend themselves and their communities against tyrants and wrongdoers.

It remains to be answered when it might be said that this right has been abridged. One of the by-products of the political polarization concerning the Second Amendment is that all sides seemingly agree that this is a question that need never be seriously addressed. True-believing gunnies think any form of taxation or regulation of firearms should be regarded as an "abridgement," no interpretation necessary. True-believing gun controllers, by embracing the "collective rights" theory of the Second Amendment, hardly need to reach the question of "abridgement," because their interpretation denies the legal standing of any individual or organization—anyone who is not a "state"—to raise the question. What is needed is some principled way to locate a sane middle ground that gives routine scope to state police powers yet respects and defers to the constitutional norm involved in keeping and bearing arms.

There are several ways one could get a handle on this problem. First, the language of the Second Amendment itself invites one to differentiate between arms that can be kept and borne (i.e., carried) and other arms. This is not the sort of difference that could support a regulatory or legislative distinction, like the "assault weapons" provisions in the 1994 Omnibus Crime Act, between functionally equivalent firearms based on such cosmetic attributes as possession of a pistol grip, flash suppressor, or bayonet lug. But it would make sense of a distinction between rifles, shotguns, and pistols on the one hand and hydrogen bombs on the other. So as a first cut at the problem, one might say that infringement in the constitutional sense does not occur when a statute or regulation imposes burdens on possession of weapons other than those that militiamen might be expected to bring ("bear") into the field with them when summoned

from their homes.

It might also make sense to allow legislatures to recognize that in certain circumstances firearms constitute a special danger. One thinks in particular of saloons: Perhaps guns and alcohol do not mix, just as (according to the laws of many states and communities) naked dancers and alcohol don't mix. This sort of limitation on the bearing of arms does not readily emerge from constitutional history or text. It would be defended simply on prudential grounds, the thought being that it is implausible that the right to keep and bear arms would be the only constitutional right not subject to some kind of rule of reason. Though philosophical firearms enthusiasts—like journalists, pornographers, and other single-issue partisans—tend to understand the term *right* quite absolutely, anyone interested in preserving a system of political and civil rights that impinge and abut on one another will have to take a more refined view of the matter.

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We allow the state to regulate the time, place, and manner of speech, or acts (like burning one's draft card) that are heavily laden with speech-like (that is, communicative) content—but we allow this regulation only subject to an all-important qualification. It must not discriminate on the basis of a communication's content, and it must be no more expansive than necessary to accomplish its purpose. Regulating the speech of Democrats more restrictively than that of Republicans, or allowing anti-abortion posters in a certain public place while forbidding abortion-rights posters, would not be regulation that was neutral in its attitude toward a constitutionally protected value. It would be censorship—a pretextual act inherently hostile toward that value. Even formally neutral regulation could disclose such hostility if it exceeded what was necessary to accomplish a proper purpose. For example, if a municipality banned all public speech whatsoever to preserve public peace and quiet (in itself a perfectly licit end), courts would say this action, though formally "neutral," was too broad to be sustained.

The Second Amendment should be seen as analogous. There would be no "abridgement" if regulation were aimed at the time, place, and manner in which firearms are used. The community has a legitimate interest in seeing to it that arms are not kept or borne negligently. It might well be permissible to pursue this interest by insisting that those who keep and bear arms receive adequate education, on the firing range and in the classroom, to assure the responsible exercise of this right. Such a law would not be invalid unless it appeared that it was being utilized pretextually—like the extravagant "literacy tests" that Jim Crow voting registrars in the South used to impose on black voters—to subvert or disparage that constitutional right. Any government burden on "the right of the people to keep and bear arms" must have an important purpose and must be justified *in spite of*, and not *because of*, its tendency to discourage the keeping and bearing of arms.

Firearms regulations should be subject to the heightened scrutiny that courts reserve for impositions on other fundamental rights, which means that serious and skeptical consideration will be given to the claim that regulation is necessary, that the means chosen correspond to that claim of need, that the state interest is a very important one, and that the regulations are no more extensive than they have to be to address that interest. As with any civil right, the burden of persuasion should remain with the proponent of legislation that restricts or burdens the right to keep and bear arms, rather than, as with ordinary legislation, on the opponent. But a public policy of simply discouraging people from owning or using firearms is not, in and of itself, a constitutionally permissible objective, any more than discouraging people from religious observance would be permissible to some future, oh-so-progressive government that considered religion as hopelessly declassé as progressives nowadays consider the right to keep and bear arms. Thus the Los Angeles Police Department has behaved unconstitutionally by refusing, over a period of many years, to exercise its statutory discretion to issue carry permits, because the department didn't think it a good idea for people (other than police officers) to carry guns around. And any statute or regulation that burdens the right to keep and bear arms on the ground that guns are a public health hazard should enjoy the same frosty reception in court that would be given to a statute or regulation that burdened the free exercise of religion as a mental health hazard.

The constitutional norms involved in the Second Amendment, unlike those elsewhere in the Bill of Rights, are undeniably controversial. No one scorns the freedom of religion or the freedom of the press; but the propositions that government should not have a monopoly of the means of violence and that "the people" should be entitled (if not obliged) to defend with arms their persons and communities—these are much against the grain of (and, as Sanford Levinson wrote, very much an embarrassment to) the cosseted intelligentsia of 1990s America. It is especially easy to empathize with the policy intuitions of this elite if one is a member of it. But our instincts about firearms are wrong. We upper-middle-class opinion leaders misunderstand the world; we abide in safety behind a ring of steel. Police officers and security guards keep and bear our arms for us, so that we do not remember how constantly we need them. The values and assumptions that gave rise to the Second Amendment come from a world different from the one we inhabit, a world full of irrational hatreds, mortal dangers, and armed enemies. It represents a serious failure of imagination not to recognize how temporary remissions from this dangerous world have been, and not to learn from the Bill of Rights what its drafters had to teach. ℞

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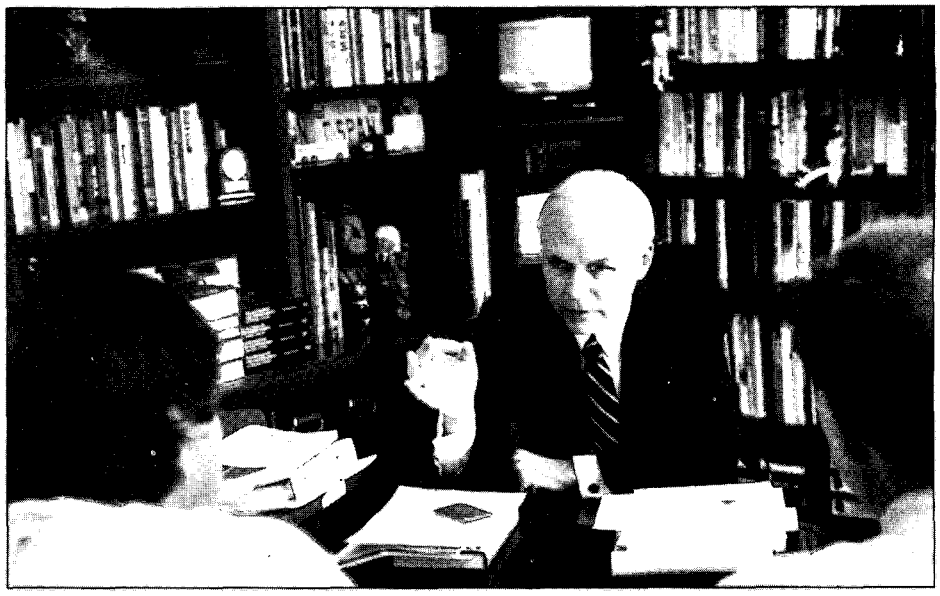
CHANGING CHANNELS

C-SPAN's Brian Lamb on how unfiltered reporting and media competition are transforming American politics

Interviewed by Thomas W. Hazlett



PHOTOS: CHAS GEER

Sound-bites. Photo ops. Glitzy visuals. Attack ads. Prepared speeches. Cutesy one-liners tested on focus groups. Bumper stickers. Meaningless clichés. Cheap tricks. Tawdry politics. Cynical government. This is what high-minded Americans know has come to dominate our public life, and they say they would do anything to save our democracy from such a crass fate.

Brian Lamb doesn't spend much of his time denouncing the political culture, saving his efforts to actually provide an alternative. The creator of C-SPAN, the nonprofit, public affairs cable network, Lamb now serves as its CEO and chief on-air host. The integrated circuitry is not an outgrowth of CEO egotism; all on-camera moderators double as C-SPAN business executives, and Brian Lamb has not once uttered his own name in 16 years of airtime.

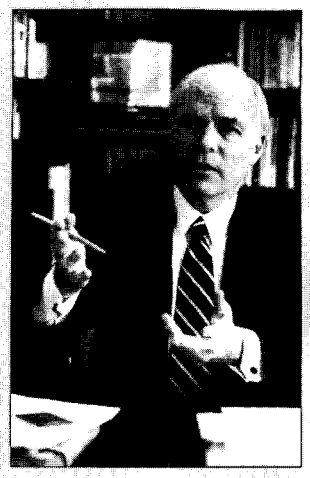
C-SPAN is a deadly serious, 24-hour news network which brings the political and cultural debate to the TV viewer unedited. A White House press conference is carried in its entirety, as is a speech by Noam Chomsky at Howard University. As is a policy conference at the Cato Institute, the Freedom Forum, or the American Enterprise Institute. Yet the mainstay of C-SPAN continues to be nonstop coverage of the House of Representatives (C-SPAN1) and Senate (C-SPAN2) floor proceedings. It's an ugly job, but somebody's got to do it.

Before C-SPAN, nobody did. The broadcast networks, with the opportunity to reach tens of millions of viewers each half-hour, couldn't afford the low audience share which congressional debates, hearings, and policy conferences inspire. Only with the deregulation of satellites in the early 1970s and the deregulation of cable television systems in the late 1970s did the idea of C-SPAN make any sense. Only in the age of cheap transmission, abundant channel capacity, and free competition between video programmers could small audiences be served.

Lamb, who studied the economics of television in his days as an analyst in the White House Office of Telecommunications in the early 1970s, later moved into the cable TV business as a reporter for trade journals. In interviewing some key congressmen, he found that he could secure permission to televise Congress in action (which some people take to be one word): Uninterrupted, gavel-to-gavel coverage of the democratic process was just the sort of low-cost news and public affairs programming which the fledgling cable industry was looking for.

Several system groups backed Lamb's efforts, and the network was underway. Today it has an annual budget of $28 million.

For which it delivers just exactly the sort of product which the critics of American media have publicly propounded as the salvation for our political souls. Both sides of the spectrum have assailed the old broadcast network triopoly of news coverage: too corporate (says the left), too liberal (says the right), too sensationalistic (says everyone). In C-SPAN, Lamb has created a product alternative that is unassailable. C-SPAN



"I worked under the assistant secretary of defense for public affairs, Arthur Sylvester, who you might remember was quoted early in the Kennedy administration as saying the government had a right to lie. It was my first education into how news was made, and what motivated correspondents and what motivated the government, how government attempted to shade and cover up and lie, and how the media in some cases would be a willing accomplice."

is scrupulously nonpartisan, inherently patient, unerringly substantive. It is the policy wonks' DreamNet.

Which is somewhat curious, because the policy wonks in Washington have made nothing but trouble for Mr. Lamb. While often the recipient of industry kudos, his praises are sung only in the most patronizing ways in the inner councils of government. C-SPAN's existence is not the subject of laboratory study in the typical telecommunications policy shop; rather, analysts who claim they desire more of what C-SPAN delivers ignore the very reasons for C-SPAN's existence, or the factors which determine its future growth.

All of which is painfully apparent to Brian Lamb, a man who deadpans so well that his frustrated viewers have no idea whether he votes Democrat or Republican. So we should listen carefully when Brian Lamb elects to speak out, with conviction and opinion, in one area alone: communications policy and the First Amendment to the U.S. Constitution.

Contributing Editor Thomas W. Hazlett, a former chief economist at the Federal Communications Commission and currently a visiting scholar at the American Enterprise Institute, interviewed Lamb in late December. He was accompanied by Washington Editor Rick Henderson.

Reason: Why do you ask for personal information from the people you interview?

Brian Lamb: For so many years on television and on radio, the experts that we hear from kind of parachute in from outer space, and we know nothing about them. There are certain reference points in life that seem to matter: Did you work in a political campaign? Where did you go to school? Where did you live? Are you married? Do you have kids? Who got you started? All that helps you understand why they think what they think.

Reason: Where were you born? What did your parents do? How was it growing up?

Lamb: I was born in Lafayette, Indiana, to parents who didn't graduate from college. My father ran a tavern for a long time, and then was a wholesale beer distributor. My mother was from Arkansas. I grew up in a wonderful little community that had really one high school, and then went to Purdue University which is in the same town. It cost me $125 a semester. I got a speech degree because they didn't have a broadcasting school and then went to the Navy when I was 22. That was a real important change for me.

I thought I wanted to be a lawyer, which was a big mistake. I got admitted to Indiana University Law School, moved for the first time in my life outside of the city, set up shop down there [in Bloomington], and lasted three days. I decided that I didn't want to go to school anymore, I didn't want to be a lawyer. I wanted to go into the service and did.

Reason: So three days of law school put you in the Navy?

Lamb: Absolutely. And I loved it. Best thing that ever happened to me.

Reason: This was what year?

Lamb: This was 1964 that I went in the Navy. I graduated from Purdue in '63.

Reason: Was Vietnam on the radar screen then?

Lamb: It was. There was a lot of tension in the air. In those days there was a draft. If you got married and had children, you didn't have to worry about it. But I wasn't married, haven't married, and didn't have children, and therefore it was something hanging over my head.

I could have avoided the draft by staying in law school, but the Navy looked attractive to me, looked like the right thing to do, so that's why I did it. By the time I got into the Navy in '64, we were very concerned that we were going to get shipped to Vietnam in '64 and '65. But we didn't.

I went to Norfolk, Virginia, was on a ship down there that traveled to the Mediterranean most of the time. After a couple of years I came to the Pentagon in the public affairs office in the Defense Department. I worked under the assistant secretary of defense for public affairs, Arthur Sylvester, who you might remember was quoted early in the Kennedy administration as saying the government had a right to lie. That was one of my introductions to government and public affairs. Robert McNamara was the secretary of defense. I spent two years there in the audiovisual news department answering questions for the networks and the television medium and setting up news conferences. It wasn't an important job but for me it was a great window on the world and how the media interacted with the government.

I was increasingly dismayed by what I saw happening. And it was my first education into how news was made, and what motivated correspondents and what motivated the government, how government attempted to shade and cover up and lie, and how the media in some cases would be a willing accomplice.

Reason: What was your clearest recollection of this relationship between the government and the press?

Lamb: I always remember one particular facet of the weekly dissemination of news. Robert McNamara used to have a weekly meeting with the press on Thursday afternoons. It was held in his dining room. The media sat around his dining room table and asked him questions. Whenever they used the material they could only quote "U.S. officials."

The public never knew who those U.S. officials were, but it allowed the government to get its message out and it allowed the media to have a story. Every Friday morning in *The New York Times* a lead story said, "U.S. officials predict the bombing of the North will end in two months." And those 25 reporters sitting around the table all knew who said it, but the public never did, and at that time no one helped them understand it.

It seemed to me to be a fraud. I know the people involved in it then thought they were doing honorable work, and no one was per se lying at a particular meeting, although the secretary of defense didn't tell the truth all the time—we've learned that since then.

Reason: By his own admission.

Lamb: By his own admission. And I kept saying to myself, There's something wrong there. This ought to be an open situation, and the more closed it is and the more insular it is, the more both sides can fool the public for their own reasons. And we found ourselves in a major war, 500,000 troops deployed and 58,000 people killed.

The biggest problem with Vietnam was that it was evolutionary, step-by-step, day-by-day. It was Chinese water torture, drip, drip, drip. Before you knew it you had 500,000 troops there and there was never open discussion or a vote taken of any significance that the public participated in. Yes, there was a Tonkin Gulf resolution, but now we understand that the set-up for it was a phony.

Reason: How did C-SPAN come to be?

Lamb: C-SPAN was conceived from 1975 to '77 and started in 1979. You can credit one piece of technology—the satellite—and a group of human beings who were leaders in the cable television industry who said, when they were presented with this idea, "Let's try it." And it came at a time when there was a need for new programming.

Reason: For decades now, the government has said that it wants public affairs programming. But nobody seems to concede that deregulation has achieved exactly the goal the government sought through regulation of broadcasters. People complain about the broadcast networks, but none of them compare to C-SPAN.

Lamb: There's an enormous disconnect between what has happened and what people in the business of talking and thinking about television say has happened. I don't understand it.

Our network [will carry] a panel discussion among so-called media experts, and they will sit there and decry the state of current-affairs [programming] as if we don't even exist. They will appear on this network, in front of our microphones, saying, "What this country needs is an opportunity for people to be heard. What it needs is an opportunity for long-form discussion. What it needs is an opportunity for more voices out there to get a chance to speak their minds." And I'm sitting there watching, saying, "What's wrong with my brain—am I missing something here?"

Telecommunications is not a partisan issue. I have seen Republicans work very hard at preventing the new communications from coming along, and they're supposed to be interested in deregulation. I've seen Democrats very interested in deregulation, in opening it up. One of our great friends at this network was [former Rep.] Lionel Van Deerlin, who was chairman of the communications subcommittee in the House in 1976. Nobody alive, ever to serve in Congress, did more for the creation of new networks than Lionel Van Deerlin. And it was in the midst of a very partisan period.

Reason: And Van Deerlin was opposed by Barry Goldwater.

Lamb: He was opposed by Barry Goldwater.

Reason: The press routinely characterizes deregulation as pro-business, pro-monopoly, whereas the pro-regulation argument is given very different treatment as pro-consumer, and for the "public interest."

Lamb: I'll tell you one little story. I was asked to testify in 1991 about the 1992 legislation that [reregulated] cable television. I've been very careful not to be a part of the industry's lobbying effort, and to stay as independent as humanly possible. But when it came to our own livelihood being affected, I agreed to testify. [Rep.] Ed Markey [D-Mass.] was chairman, and I sat there and said, "If you pass must-carry and retransmission consent [the requirements in the 1992 cable bill that local cable systems carry every local broadcast channel even if they duplicate other channels' programming, or pay broadcasters who wish to charge for their signals], you will hurt C-SPAN—the only nonprofit public affairs network in this country. You will hurt this network, we will be set back, our growth will be stymied, and we will lose homes."

At the same desk, [testifying] that same day is Larry Tisch, [CEO of] CBS, and he is protesting that if [the broadcast networks] don't get retransmission consent, and must-carry, they will be out of business. The implication was that they would be hurt badly.

In fact, there are 7 million homes in the United States that have lost C-SPAN because of must-carry and retransmission...

Reason: Seven million?

Lamb: Seven million.

Reason: Out of a universe of 60 million?

Lamb: Yeah. At one point or another, they either lost that subscriber entirely or got cut back on C-SPAN or cut back on C-SPAN2 or they lost C-SPAN2.

No one else had this kind of hit. No one was hurt as badly as we were. To this day we're hurt. We've spent thousands of dollars as a part of the court cases involved in this. I'm constantly bewildered about what is going on here.

Must-carry is the greatest travesty to ever happen to this network. I'm having intellectual problems with it. I'm not a lawyer, and I don't consider myself to be that smart, but I read the First Amendment and then I read the must-carry legislation and it doesn't go together.

In almost every case that we've been bumped [from a local cable system because of must-carry] it's been because of some

shopping channel being brought in from 45 miles away, or the fifth public television station brought in from out of state, and I don't understand it. Essentially, the law is saying that the programs these channels show have a right to be carried while C-SPAN does not. I'm at a loss to understand how the First Amendment and the must-carry regulation, or for that matter retransmission consent, go together.

And when we [go to Congress] saying what we say, people look at me, pat me on the head and say, "Nice little boy—we're really proud of what you're doing." But we never have asked for a special favor. We've said, "Just treat us as a first-class citizen in this mix." And [this message] is not heard.

Reason: What does C-SPAN charge a local cable system?

Lamb: It's a per subscriber, per month figure of 6 cents. They get everything we have for one price.

Reason: Even C-SPAN3?

Lamb: Three's available to the local Washington cable systems. It's not on satellite yet. And we're waiting, again—and it's been an incredible wait—for the infrastructure to be opened up, because government can't make up its mind [on a telecommunications bill]. The rate regulation of 1992 and the restrictions put on to keep cable from getting into the telephone business, and vice versa, has kept a cap on this explosion that will occur.

Reason: How has that happened?

Lamb: Business types look at the world and say, "I'm not going to venture into a field that's unknown until I'm told that the government isn't going to put the clamps on me again." The greatest thing about business is that when you can create and you have an unlimited field and no one's there to stop you—and you can create, and create, and create, and sell, and sell, and sell—all kinds of new things happen. Now the lid's on.

Reason: Because of the rate controls?

Lamb: Because of the rate controls, and because all through the years Congress has said, "We'll take care of this broadcaster group, and this cable group, and this telephone group, and we'll keep you all happy in your little monopolies, and we won't let you compete in each other's world, and everybody's going to be happy."

What also has been at work here is that members of Congress see an opportunity out of each one of these industries to generate PAC money. The industries are only playing the game according to the rules. They're going to give the maximum amount of money and the politicians are sitting there saying, "We need the maximum amount of money to run our campaigns." Telecommunications has been this humongous tin cup for politicians for a lot of years, and it's gotten to the point where you've got to watch very carefully to see why a new piece of legislation is dropped in the hopper because it could do nothing more or less than generate tremendous amounts of money into the political coffers of both parties. [The industries] must contribute to the campaigns of people, not just from their districts, but from outside because these committees have so much power.

C-SPAN has no real clout. In the end members of Congress really don't want to be seen and heard like we've shown them. They [prefer] that the process not be seen. And lately there have been a couple who admit it. Freshman [Rep.] George Nethercutt [R-Wash.] is on the record saying that because we're here, we're the problem.

They only want things to be open so much. We've asked to put our own cameras in the chamber of the House and the Senate, and have been laughed at behind the scenes. [Congress has always controlled the cameras.] We've made some inroads, but we're a long way from getting to the real story of what goes on in Washington, D.C.

Reason: So much of it goes on at the markups and the committee meetings that you can only cover selectively.

Lamb: Now we're allowed to show all committee meetings, but for 15 years John Dingell [D-Mich., former chairman of the House Energy and Commerce Committee] wouldn't allow cameras into a markup. We asked at the beginning of the 104th Congress to cover all markups, all conferences, all committee meetings, and were given that in the rules of the House.

But now what happens in conferences is we show up with our cameras, and they'll have a public meeting, and then they'll shut it down and do private meetings until they get their decisions made, and you'll never see how the deals are cut. Then they'll come back to the public meeting and we'll be able to show the last hour of the debate, but you'll never know how staff put the whole thing together behind the scenes. I suspect you're never going to know. I think people will find ways to not show the public how the decisions are really reached.

Reason: You are in an unregulated sector, you don't have a public interest obligation, you don't have a license from the FCC, you're out there in the unregulated world, yet somehow this oasis of information and objectivity has blossomed. How did C-SPAN become C-SPAN?

Lamb: The short answer is that [fairness] was our objective and we stuck by our objective—that was our mission.

I took at face value what people were saying—in the government and in the media and in business over the years—that all they really cared about was fairness and objectivity. And the closer I got to it, the less I believed it.

I'm not trying to do an "Aw shucks" routine here, but I'm a little guy from a small town in Indiana who believed in all those civics teachers. When I came here, looked at it up close, saw it first hand, I said, "This is not what I was taught. This is just not the way that they told me in civics class that it was supposed to be."

I've been enormously lucky to have had some tremendously honest businesspeople who trusted me and supported me—and now us—to get this job done. I can take you to no less than 15 human beings and say these people made this place work because they learned what we were really up to, and then they really believed, and now they are our strongest supporters. They would kill for us. They are cable television executives who have been slammed by Congress saying, "They're nothing but greedy people—all they care about is money." But they did create an institution that truly belongs to the public.

I never believed in the Fairness Doctrine. I thought it was the biggest joke in the history of the world. To put a government official in the Federal Communications Commission and say, "You decide what's fair" is outrageous.

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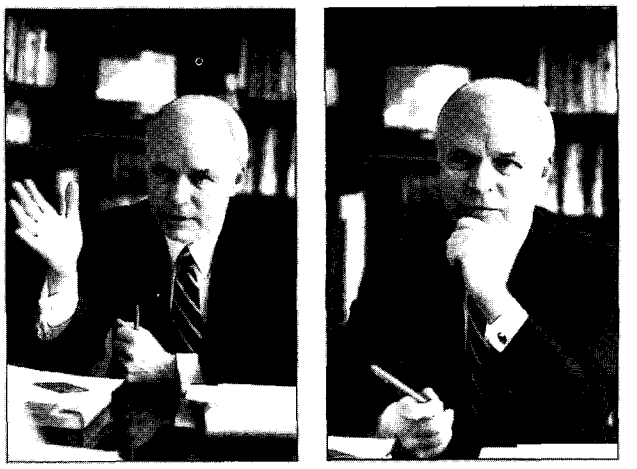


Then we came [along] saying, "We're not going to make money," and we got support from all these different cable television executives, and they've never ever interfered with us, ever. At the base of most American businesspersons, once you scratch through all the nonsense, is a very honest individual who wants to do the right thing. That's what I've experienced here. And that story is never told because the press doesn't particularly care about it—they don't want to say anything nice about people in business.

I have no problem saying that, because I've seen it first hand, and I've seen [businesspeople] be a lot more honest in the end than some people in my own profession, meaning the media business. Because people in the media business are no more honest than people in business. They just like to think they are.

Reason: How many people watch C-SPAN?

Lamb: I have absolutely no idea.

Reason: You never look at that?

Lamb: Never, ever, ever look at that.

Reason: Do ratings services rate C-SPAN?

Lamb: They do not. And actually it hurts us with [the media]. There are several things that the press demands you be involved with in order to cover you in any extensive way. One is personality. Two: ratings. Three: profit. And four: advertising. If you don't move money to somebody's bottom line, or if you don't move money in the stock market, or if you don't look and walk and talk like a business, the press automatically loses interest.

Reason: What's your annual budget?

Lamb: Our annual budget is somewhere around $28 million, I say around there because we're right in the middle of a change in the fiscal year.

Reason: You have about 200 employees?

Lamb: 220 employees. But we are really small. I mean, if you compare us with the size of CNN, the Washington bureau alone, they probably have about 380 employees. We have 40,000 square feet; they have something like 70,000 square feet of space down there.

Where we have an annual budget of $28 million, they have annual [revenues] of something like $700 million. They're a for-profit business, and we're not. We're apples and oranges, we're different organizations, we have a different reason for existing.

We have no need for ratings, because the minute you put ratings on to this, then we start making decisions based on what will people watch, in order to bring eyeballs to advertisers, in order to bring profit to the bottom line. And that's not our goal.

Reason: What about the viewers? You've done some surveys.

Lamb: We know, for instance, that no more than four out of 10 [cable viewers] ever watch C-SPAN. That's not a scary figure, because most cable networks have a dynamic like that.

Roughly 90 percent of our viewers vote. We know that. We also know that it's a normal audience, it's not a super-educated elite audience, it's not a public television audience. Something like 15 percent of our audience is under 24 years of age. It's about the same number of Republicans, the same number of Democrats, 20–25 percent independents. We have fewer black viewers than the population at large—it's something like 8 percent of [our viewers], and the population is 12 percent. Five percent of our audience is Hispanic, when Hispanics are 9 percent of the population.

A lot has to do with who buys cable. But we know that our audience is active, it's more diverse than the callers are.

Reason: You take about 11,000 calls a year.

Lamb: We probably take more than that now.

Reason: How have you been surprised by the callers?

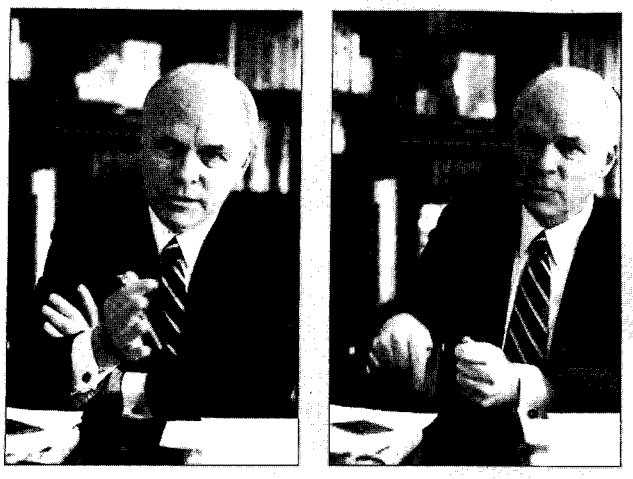
Lamb: I've been surprised at the extraordinary breadth of intelligence in the country, people who know on every issue, more than the experts who live and work here. [Callers] who are experts on history, who have had first-hand experience in an industry in the middle of a debate can call up and say, "I don't know what you're doing out there, but I've worked as an airplane pilot for the last 25 years, and you've just got it wrong."

We've also learned that the people who call the call-in shows are very aggressive people who have strong views and often strong negative views about everything. They're angry, so they go to the phone, they pick it up and say, "I'm going to have my say-so." And that's fine.

You know there's a lot of anxiety among media folks in this country about the anger in the call-in shows. Well, there are people in this country who are angry, so let them talk. You know, the more they talk the better off it is. Let it rip, let people say what they want to say.

You have viewers who watch all day. But that's a minor percentage. Then you have viewers who watch one hour a week. But this is a country where 70 percent of the people find what they want to watch by using a remote-control device. That's the way they find C-SPAN.

Guests will often say after they've appeared here, "I've never



"The biggest change hasn't been what we've done—the biggest change is the multiplicity of choice. People no longer get up in the morning and say, 'What is the *Today* show doing for me today?' They get up and literally have choice. We now can control our lives. If you're controlled by the media world, well, then it's your fault and you can't blame the media. You no longer have to march to anybody's drum. We're just one of very many choices we have on the dial."

gotten as much feedback from any program that I ever appeared on." There's a very simple reason: When they appear here, we run [the show] three or four times, in different time zones, at different times. So the chances of people finding a face that they recognize and that they want to hear from is much greater here than it is in any other place in television.

The *Today* show comes on from 7 to 9 in the morning and that's the last time you see it. If you'd get a sound bite on CNN it might run 12 times during the day and somebody would say, "Oh, I saw your sound bite." Here, they'll see your whole discussion.

This is the only place in the history of electronic communications where someone can approach a microphone with a speech, stand in front of the microphone, and complete their thoughts without any interference, whether it's an elected representative in the House of Representatives or the United States Senate, or whether it's somebody who's at the National Press Club.

I was watching Richard Leakey on this network this morning talking about Kenya and he could say everything he wanted to say within that hour and no one was going to interfere with him. That's a dynamic here that very few people understand, and that is the biggest change that we have contributed to communications—that there are thousands of people who have stepped in front of a microphone over the last 16 years who have been able to say everything they've wanted to say.

Reason: How do you select the journalists, how do you select the symposia, how do you select the books?

Lamb: The same way any other editorial group selects anything. And the luxury that we have here [is that we can ask], "All right, did we have the other side on a week ago, and do we need to put this side on now?" Decisions aren't reached that way in other places. Their drive is rating points. That's their success mark, the sales and the advertising. We are able to sit back and say, "Did we have the lobbyist on today, and did we get the anti-lobbyist position on?" That's a great luxury, and that's what drives us all.

Reason: Has providing an unfiltered message caused Congress to change at all?

Lamb: It's hard for me to know, because there's so much change in the media at large. I think the biggest change hasn't been what we've done—the biggest change is the multiplicity of choice. And added to that is that 85 percent of the American people have a VCR, 15 percent [subscribe to] an on-line service, and radio's been deregulated. So you have this tremendous choice out there of radio stations to listen to. You've got video games. People no longer get up in the morning and say, "What is the *Today* show doing for me today?" They get up and they really, literally have choice.

In an interview that was on this network a couple of years ago, George Will talked about how he gets up every morning and plops an audio book into his tape recorder and listens to that. We now can control our lives. If you're controlled by the media world, well, then it's your fault and you can't blame the media.

There's so much choice out there—175 channels on a satellite service, there will soon be that same number of choices on cable—you no longer have to march to anybody's drum. And I think that's more important than whether we have changed the coverage itself, because we're just one of very many choices we have on the dial.

Reason: But even so, some personalities have benefitted very much from having access to the airwaves unfiltered. Newt Gingrich, in particular, was a master of using one-minute speeches. Would there have been a Republican Congress had it not been for C-SPAN?

Lamb: I have no idea. I don't think there's any question that Newt Gingrich took full advantage of the opportunity to speak directly to people in the country via C-SPAN, but so did Al Gore. Al Gore used C-SPAN as much as Newt Gingrich did, in a much different way. He was chairman of the committees [in the Senate]. He often would call hearings during recess periods when everybody else went home and we'd cover them in their full five-day sessions. But we're here to be used, and this is the way this country ought to operate—when you're now elected to Congress whether you are a Republican or a Democrat you are assured you can talk back to the constituents via electronic media.

The great frustration in days past was you'd get elected to the House or the Senate, you'd come to Washington, and from that moment forward, if you were going to speak back to your constituents you had to speak back through a television station or a radio station in the community and that reporter in Washington had to give you permission. That's no longer the case.

We fit in by having a direct pipeline back, that, by the way, not everybody watches. There was a time when if ABC, NBC, and CBS carried a president's speech, everybody in the country watched it because they had no other place to go. Those days are over. If you're a president in the future, you'll have to go back to the days of Abraham Lincoln in having to get people's attention

through a lot of different ways.

Reason: People generally agree that you do a better job in your pursuit of fairness than has ever been done, but for some people the belief remains that Noam Chomsky or Ralph Reed or others not exactly in the mainstream should be on C-SPAN more. What kind of pressure do you feel to expand the debate outward?

Lamb: Not much, because we have already expanded the debate outward. I'll give you some examples: Every [election] year we cover the Libertarian Party convention in its entirety. We covered the Unity Convention in Atlanta of Hispanics and blacks and [other] minority groups. Before the Million Man March we covered Khalid Muhammad, which made a lot of people furious and outraged.

We have 17,000 hours a year to fill on the two networks, but we only have 25 cameras—that's the real hang-up. We can only afford to do so many things, and there has to be a point where we say, yes-no, yes-no. The public doesn't realize how many mainstream people get "no" because we just don't have the time. And keep in mind that the base of this network, the most important part of it, [is televising] the House and the Senate, in their entirety, every day. Everything else we cover is just icing on the cake.

Reason: What do you think of the talk radio explosion? When the Fairness Doctrine was eliminated in 1987, the percentage of informational formats in radio took off.

Lamb: Deregulation saved FM radio and talk saved AM radio. I'll go a step further—satellite radio will spawn some fabulous opportunities for people. When a car can roll down a road and listen to a satellite channel, I can't wait. C-SPAN's going to be there.

Reason: I beg to differ with you, but knowing how rapidly the FCC licenses new competitors you *can* wait....

Lamb: (laughter) I like talk radio, I listen all the time. I love being out in my car driving across the country listening to all the different shows. I'm a big fan of the idea, and I don't worry about it. If we can't survive talk radio, we aren't much of a democracy.

There's a sense [in Washington] that only a certain group of people should be controlling the air waves, because they're more responsible and they have the right kind of opinions, and they're not going to take things too far. The great thing about talk radio is, the more you have, the better it is. The more voices you have, the more chance you have of giving everybody a chance to have their say-so, and we'll be a healthier place to live.

I listen to Mario Cuomo on Saturday mornings in Washington, D.C., and I listen to Rush Limbaugh on my radio on the [taped] replay when I get up in the morning, and I listen to Michael Reagan, and I listen to Gloria Allred when I'm in California, and Michael Jackson who we've simulcast on this network, and Tom Leykis from California, who's a big liberal, and Ron Smith from Baltimore—you can just go down the list of all these people. I love to listen to different viewpoints. The last thing I want is a journalist to tell me what I can listen to. I don't want the government to tell me what I can listen to.

I would trust the public at large any day to make a decision over what is good and bad and how many choices there are out there before I would a government based in Washington. And that's not being critical of the government, it's just the nature of the beast. The government feels like it has got to help everybody and protect everybody and to prevent people from hearing things that are bad or negative. And that's not real life.

Reason: So you're not exercised about this threat of media concentration people talk about.

Lamb: I'm not. I'm not worried at all that Rupert Murdoch or Ted Turner or Time Warner or any of these people is going to become too big, as long as there is total deregulation. Let a thousand flowers bloom. Don't put an artificial government [barrier] in the middle of this.

We're going to make it because one thing we know about this country is that it loves diversity. It loves choice.

Reason: What about the current efforts to regulate the Internet?

Lamb: The Internet might turn out to be the most important deregulation of voices in the history of the world, and it's unlimited. It will go forever. If you put restrictions on the Internet, people will get around them. They will figure out ways to send information in code. They'll get around anybody that stands in authority in the middle and says don't do that.

We're better off just having people set by example what they think is right and wrong and putting down obscenity and libel laws when people do go over the line and let it be decided in a court of law. It's clumsy, but having some human being, the czar of the Internet, sit somewhere and decide what is right or wrong, will not work, it will not last, and in the end it will be a waste of time.

Reason: The V-chip is very popular with liberal Democrats and conservative Republicans. What do you think about the regulatory measures proposed to deal with violence on television?

Lamb: I wish it would work, but parents have the ultimate responsibility and it's hard for me to know how you're going to determine who judges what's violent.

I don't happen to like violent movies. I don't go to them. But I don't have any children either. When I was being brought up my parents created the environment for me, but they basically left me alone and I had to learn to not like or like things on my own. And no matter how moral they were or no matter what their rules are, today I have a whole different set of rules than what they had.

There's an awful, awful lot that comes out of Hollywood I think is despicable—for example, the Oliver Stone movies as history/entertainment. I don't like what he's done with the movies, so I don't go to them. I worked for Richard Nixon, and we saw what Richard Nixon was all about and the mistakes that he made. I don't need somebody skewing the facts to know that it didn't work out too well for him.

But I am devoted to history, and this network is devoted to history. We like to tell it like it was and like the historians see it, or go back and look at the documents and let you make up your own mind.

However, Oliver Stone should be able to be in business forever. If people want to go watch that stuff, that's their business. Should the government regulate that? Of course not.

Reason: Thank you. ®

Disclosure Flaw

By Brian Doherty

The perils of campaign-finance disclosure laws

POLITICS IS A REALM OF UNINTENDED consequences. In California, a wave of post-Watergate revulsion with arrogant, corrupt politicians led to the passage of the Political Reform Act in 1974. That law slapped strict campaign-finance disclosure requirements on state political campaigns. Twenty years later, the same law is being used to strike at private citizens who attempted to discipline a powerful politician they considered arrogant and corrupt. The results raise worrisome questions about the possible abuses of even the seemingly most innocuous regulations on citizens' participation in politics.

In October 1995, California's Fair Political Practices Commission, charged with enforcing the PRA, levied the largest fine in its history, $808,000, against Southern Californians Russell Howard and Steve Cicero. They had been the president and treasurer, respectively, of Californians Against Corruption, a now-dormant group of political gadflies that was part of a coalition dedicated to unseating California Democratic state Sen. David Roberti. Roberti, a 23-year Senate veteran, had been Senate president pro tem for 13 years. The recall coalition got its new election in April 1994, collecting more than twice the necessary 20,670 signatures.

But in doing so, CAC didn't keep up with the complicated paperwork requirements the PRA demands. Their hefty fine is mostly for hundreds of counts of not reporting the occupation, employer, and address of people who donated more than $100 to the recall cause.

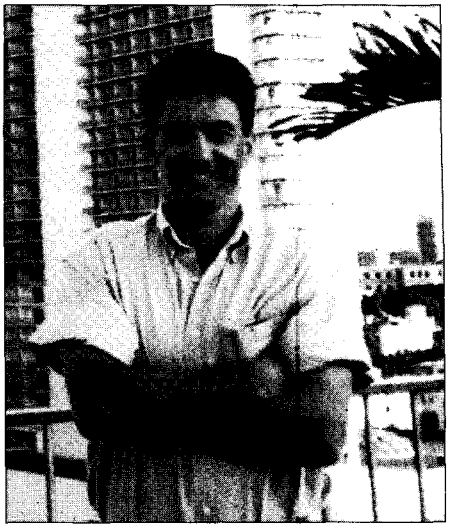
Despite admittedly not filling out the proper forms at the proper times, a weary Howard insists, as the list of charges is read to him, that the FPPC has at its disposal all the information it wants. "They have a copy of every check we ever received, and the vast majority have those addresses on the check," he says. "My life should be ruined because I didn't fill out the proper forms in triplicate?"

While CAC asked all contributors to fill out employer and occupation information with their contribution, the vast majority simply didn't, Cicero says. Gary Huckaby, an FPPC spokesman, says it's the organization's legal responsibility to collect that information or not accept the money.

THE PRA WAS ONE PART OF A NATIONAL wave of post-Watergate state and federal campaign-finance reform law. The motives and goals of such laws seem pure and sensible: to get a public handle on the possible secret governmental influence of big money interests. But applying such a law to a nonpartisan recall campaign raises different issues.

As Cicero wrote in a letter responding to the FPPC's charges, "It is one thing to practice oversight on the people's behalf to insure that politicians running for office are kept honest. They stand to reap enormous personal gain from the power and influence they will have once elected. It is another thing entirely to harass grassroots organizations seeking to improve the government to which they are subjected."

Some perspective: Californians Against Corruption's entire recall campaign spent only $103,091—about one-eighth the fine they received for not reporting properly. The fine is the largest ever given out by the FPPC. The next largest was $772,000 against a developer for laundering money to Oakland City Council members and mayoral candidates. The level plunges from there; the third highest



Russell Howard: His grassroots recall campaign led to the largest campaign-finance fine in U.S. history.

FPPC fine was $447,500 against a shipping company, also for laundering money to city council members, this time in Los Angeles.

Ken Gross, a former head of enforcement for the Federal Elections Commission, says the fine against CAC "seems totally out of bounds. It offends any sense of reasonableness. [The CAC's violations] don't compare with what are considered more substantive elements of illegal funding."

Though Roberti won the recall election, he has since been ousted by term limits. Still, Howard says Roberti's long years of power in California raise the possibility that the FPPC's huge fine is a political revenge hit. Roberti denies any influence on the fine, and any personal connection with the commission members. "I haven't gone through the details about how they base the fine, and I don't want to second-guess them," Roberti says. "Suffice it to say I think a hefty fine is warranted."

The FPPC's Huckaby agrees. Howard and Cicero's violations were in "outright defiance" of the law, and were "fully in-

tentional, with aggravating circumstances, not mitigating ones. We have a $2,000 maximum per-violation fine, instituted 20 years ago. If the commission were unilaterally reducing fines, you'd quickly lose parity or equity among all the cases." Each donor's missing occupation cost $2,000; each missing employer cost another $2,000; and so on. Few lawbreakers face such hefty fines, however. Generally, the FPPC negotiates a less-costly settlement. But Howard and Cicero refused to cooperate and got hit with the maximum fine for each violation.

HOWARD ADMITS CONTEMPT FOR THE law. But he has his reasons. He maintains that California's Political Reform Act is a clear violation of the First Amendment. "The law sets up prerequisites for the exercise of First Amendment rights that are extremely complicated and enforced as selectively as they want. I'd have to be an attorney or an accountant to be able to wade my way through [the PRA]. If I had had to stay up until five in the morning filling out those forms, there never would have been a Roberti recall. We were a grassroots organization. We all had other jobs. We're not like the big parties. [Complying properly] would have taken a huge percentage of our resources."

The 1976 U.S. Supreme Court case *Buckley v. Valeo* declared that paperwork requirements in campaign-finance laws don't violate the First Amendment in and of themselves. But one Supreme Court precedent might help Howard and Cicero: In the 1982 case *Brown v. Socialist Workers Party*, the Court said that showing reasonable probability that disclosure of donors might lead to threats, harassment, or reprisals could exempt a campaign from disclosure laws.

That's a question of fact that can be difficult to prove. Howard thinks both the unprecedented fine itself and the FPPC's history of niggling investigations of CAC's doings since its 1992 founding show that the commission was intent on harassing them. But such circumstantial evidence is far from definitive.

Still, special complications of recall campaigns against powerful politicians, even beyond the time-consuming paperwork burden, raise the question of whether campaign-finance disclosure laws are appropriate for every kind of political campaign.

One of the motives for the Roberti recall was that he had spearheaded the Roberti-Roos Assault Weapon Control Act, a 1989 law that banned "assault weapons" in California. Because of the popular perception of the recall as a "gun-nut" issue, "We had people afraid of going to jail if their name gets on a list," Howard says. "'We've got a potential Roberti-Roos violator here, let's go check out their home.'"

(Despite consistent media portrayals otherwise, however, gun-rights activists weren't the only ones upset with Roberti. The recall coalition included groups with no direct interest in guns, such as Operation Slushfund, a legislative-spending watchdog group. Roberti was perceived by many as generally too soft on crime and too linked with political corruption. Three men he appointed to committee chairs in the state Senate were later convicted of felony corruption.)

Others had different reasons to fear being publicly connected with the recall effort. Bill Dominguez, one of Roberti's Democratic opponents in the recall election, says that a local newspaper columnist's habit of printing the names and donation amounts of contributors to the recall effort spooked many grassroots activists. "I haven't seen this done for any other political campaign or grassroots group. I've never seen anyone plastering names all over the place like this. We were not being painted in the best light. Every third word in connection with this was white supremacist or neo-Nazi." Some donors received swastikas in the mail, Howard says.

Even beyond public obloquy, anyone working for or doing business with the state of California would understandably be leery of advertising that they were trying to oust the president of the state Senate. "Lots of people applauded what we did but wouldn't touch it with a 10-foot pole for fear of bad things happening to their legislative agenda," Howard says. "Even lots of senators wanted to get involved but couldn't for fear of retribution, worries about 'What'll happen to my crime bill?'"

NEITHER HOWARD NOR CICERO CAN AFford to pay the $808,000, which they are jointly liable for. Cicero works part-time as a software consultant, and is now already in debt and in default on his mortgage. Howard, a former stockbroker, lost his job because of his work on the recall election and has lately been doing carpentry work around his father's house. Cicero informed the FPPC that he can neither afford to pay the fine nor hire a lawyer, and is now waiting for the next step. Howard will be getting legal help from the Institute for Constitutional Rights, a nonprofit public interest law firm dealing with free speech issues. They are currently seeking a lawyer with the appropriate expertise for the case.

The deadline to pay the fine was December 11. Possible action, says the FPPC's Huckaby, could include garnishing of wages and income tax refunds, attaching bank accounts, and seizing property and automobiles. In its 21 years, the FPPC has failed to collect over one-third of the $6.7 million in penalties it has levied. But the commission has recently stepped up enforcement efforts, Huckaby says. Diligent enforcement of this fine would have Howard and Cicero working the rest of their lives to pay it off.

"I just didn't imagine that there was some sort of Rube Goldberg huge manual that I had to satisfy at peril of my financial future and life to exercise my First Amendment rights," Howard says. "We're just a grassroots organization. If you want to get involved in politics, you should be able to do it. If you have a beef, get involved. But if you get involved above the level of just voting, then the state says they control the whole process. And that's just not right." ®

Brian Doherty (BMDoherty@aol.com) is assistant editor of REASON.

Burning Questions

By Jacob Sullum

The Ashes of Waco: An Investigation, by Dick J. Reavis, New York: Simon & Schuster, 320 pages, $24.00

Armageddon in Waco: Critical Perspectives on the Branch Davidian Conflict, edited by Stuart A. Wright, Chicago: University of Chicago Press, 394 pages, $15.95 paper

Why Waco?: Cults and the Battle for Religious Freedom in America, by James D. Tabor and Eugene V. Gallagher, Berkeley: University of California Press, 252 pages, $24.95

IN 1979, THE YEAR AFTER MORE THAN 900 followers of Jim Jones committed suicide in the Guyanese jungle, I attended a gathering sponsored by the National Conference of Synagogue Youth (NCSY) where a speaker warned us about the dangers posed by "cults." He said cult members reach out to young people, pretend to be their friends, and invite them on retreats where food is meager, group activities such as prayer and singing are emphasized, and new recruits are never left alone, lest they start thinking for themselves. To me and several other wise guys in the group, this sounded a lot like an NCSY convention. It was an observation we could laugh at, because clearly there was a big difference between a youth group run by the Union of Orthodox Jewish Congregations of America and loony cults like the Moonies and the Hare Krishnas. Superficial similarities aside, one was legitimate and respectable while the others were weird and vaguely sinister.

That sort of confidence, reinforced by decades of propaganda against unconventional religious groups, helped set the stage for the deaths of 80 men, women, and children at the Mt. Carmel Center near Waco, Texas, in 1993. As Texas journalist Dick J. Reavis writes in his thorough and lively account, *The Ashes of Waco*, "The line between churches, which Americans believe should be protected from government interference, and cults, which most Americans hold in disdain, has nothing to do with the Constitution—whose First Amendment in theory shields both—and everything to do with the prejudices of a nation that has grown fearful of the diversity that made it nearly unique."

Several contributors to *Armageddon in Waco*, an informative but sometimes dry and repetitive collection of essays edited by Lamar University sociologist Stuart A. Wright, make similar points. "The failure of normally open-minded people to protect religious pluralism has allowed contemporary witch-hunters to declare open season on marginal religions or 'cults,'" writes James R. Lewis, editor of *Syzygy: Journal of Alternative Religion and Culture.* "The Branch Davidians' chances for a fair hearing were severely damaged as soon as the label 'cult' was applied."

Two professors of religious studies, James D. Tabor of the University of North Carolina at Charlotte and Eugene V. Gallagher of Connecticut College, argue eloquently and persuasively in *Why Waco?* that the central failure of federal negotiators after the aborted February 28 raid by the Bureau of Alcohol, Tobacco, and Firearms was their unwillingness—or inability—to take the beliefs of the Branch Davidians seriously. The cult stereotype told them that David Koresh was a cynical con man who had tricked or brainwashed his followers for his own personal gain. Furthermore, the negotiators did not have the background to understand Koresh's extended biblical exegesis ("One of the FBI negotiators admitted," write Tabor and Gallagher, "that some of them initially thought the Seven Seals of the book of Revelation, about which Koresh talked incessantly, were animals"), and they failed to consult with anyone who did. So they soon lost patience with Koresh's "Bible babble," which they considered a meaningless distraction.

FROM THE PERSPECTIVE OF THE BRANCH Davidians, however, the religious significance of the standoff with the federal government was all important. "The only effective way to communicate with Koresh," write Tabor and Gallagher, "was within the biblically based apocalyptic 'world' he inhabited, taking advantage of the inherent flexibility that the situation at Mt. Carmel presented." If the Branch Davidians perceived the standoff with the FBI as fulfilling the martyrdom foreseen by biblical prophecy, they would prefer to die rather than surrender. But if they could be convinced that the final confrontation had not yet arrived, a peaceful

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resolution was still possible.

Tabor and another Bible scholar, Philip Arnold, apparently succeeded in convincing Koresh, by way of a discussion on the radio, that the Seven Seals passage in the Book of Revelation, central to the Branch Davidian faith, did not require him and his followers to die in the spring of 1993. Tabor and Arnold argued that the relevant prophecy left open the possibility of an interlude during which Koresh would explain his interpretation of the Seven Seals to the world. On April 14, Koresh released a letter to his attorney, Dick DeGuerin, in which he declared that God had given him permission to surrender once he had completed a written explanation of the Seven Seals. "As soon as I see that people like Jim Tabor and Phil Arnold have a copy I will come out and then you can do your thing with this beast," he wrote, offering "to stand before man to answer any and all questions regarding my actions."

UPON BEING INFORMED OF THE LETTER, Jeff Jamar, the FBI special agent in charge at the scene, reassured DeGuerin that "we've got all the time it takes," even though he knew that meetings were being held in Washington that day to plan the tank-and-tear-gas assault that the FBI would mount four days later. After Mt. Carmel went up in flames, Jamar said he viewed the letter as a delaying tactic, a claim he reiterated at congressional hearings last summer. Yet Koresh was in fact hard at work on his exegesis, and he completed the first section of it just before the final attack. A survivor brought it out with her on a computer disk, and the text appears in an appendix to Tabor and Gallagher's book. They estimate that he would have completed the document in another week or so.

In arguing that Koresh could not be trusted to keep his promise, the FBI noted that he had agreed to come out on March 2, after a one-hour message he prepared was broadcast on the radio, only to renege because, he said, God had told him to wait. But as Tabor and Gallagher note, after this point Koresh's position was consistent: He was waiting for permission from God. On April 14 he said he had received it. The FBI agents not only did not believe that Koresh was communicating with God; they did not believe that *he* believed it. And it was this blindness, more than anything else, that made a violent end inevitable.

In *Armageddon in Waco*, Nancy T. Ammerman, a theologian who prepared a report on the operation for the Justice and Treasury departments, quotes a March 8 memo from two FBI agents, Pete Smerick and Mark Young, who had more insight than their colleagues: "It has been speculated that Koresh's religious beliefs are nothing more than a con, in order to get power, money, women, etc., and that a strong show of force (tanks, APC's, weapons, etc.) will crumble that resolve, causing him to surrender. In fact, the opposite very well may also occur, whereby the presence of that show of force will draw David Koresh and his followers closer together in the 'bunker mentality,' and they would rather die than surrender." Smerick and Young warned that "we may unintentionally make his prophecy [of martyrdom] come true, if we take what he perceives to be hostile or aggressive action."

Tabor and another Bible scholar, Philip Arnold, apparently succeeded in convincing Koresh, by way of a discussion on the radio, that the Seven Seals passage in the Book of Revelation, central to the Branch Davidian faith, did not require him and his followers to die.

Trying to explain why the FBI did not heed such warnings, Ammerman reports that her interviews with federal agents suggest they were inclined to dismiss Koresh's beliefs for various reasons. "For at least some of those involved," she writes, "religion itself is a foreign category. They have little experience with religion themselves, and they do not really understand how anyone could believe in a reality not readily provable by empirical means." Others grew up with religion but later rejected it, while still others were themselves religious and considered the Davidians heretics. (As all three of these books show, the Davidians' beliefs were close enough to those of "respectable" religious groups to elicit charges of heresy. Koresh's followers were essentially deviationist Seventh Day Adventists, not some random cult inspired by extraterrestrials. And Koresh, by the way, claimed to be *a* Christ—from the Greek for messiah, meaning "anointed one"—not Jesus Christ.) I would add a fourth category of skeptics to those suggested by Ammerman: Many people who are ostensibly religious—going to church, celebrating holidays, observing rituals—do not truly *believe*, and have difficulty understanding those for whom religion is not just something cozy and familiar but the central organizing principle of life.

The upshot of all this was a fundamental misperception of the situation at Mt. Carmel. Confronted by deeply committed believers who were happy where they were, the FBI saw hostages who needed to be rescued. Even if that perception had been correct, the bureau's handling of the situation can only be described as bizarre. As the Justice Department report would later concede, the negotiators were working at cross purposes with the FBI's tactical personnel, trying to build a rapport while their colleagues sought to intimidate and harass the Davidians by crushing their cars, blaring loud music and obnoxious sounds, and cutting off their electricity.

ONE OF THE STRONGEST IMPRESSIONS left by these three books is that sheer incompetence goes a long way toward explaining what happened at Mt. Carmel. Reavis's description of BATF preparations for the bureau's February 28 raid is comical. To conduct what was supposed to be clandestine surveillance of the

Branch Davidians, several BATF agents moved into a nearby house. They told residents of Mt. Carmel they had come from West Texas to attend Texas State Technical College in Waco. Yet they were all in their 30s and 40s, and they drove new cars that (as the Davidians discovered) were registered in Houston, on the eastern side of the state. When Branch Davidians who had attended TSTC asked about teachers and administrators there, they got blank stares. One of the agents claimed to have been a ranch foreman in West Texas, but when he was asked how many head of cattle an acre of land there could support, he had no answer. Another agent said he was a novice with guns yet showed off expensive weapons that had been specially modified. Finally, passers-by could see telephoto camera lenses in the windows of the house.

After you read about this little misadventure, it's not so hard to believe that BATF officials would choose to proceed with the "surprise" raid even after they learned that the Davidians were expecting them (though Reavis doubts the element of surprise was ever considered that important, since the BATF was accustomed to bad guys who surrendered when confronted by overwhelming force). Four agents and six Davidians were killed in the ensuing shoot-out.

IN A SENSE, *THE ASHES OF WACO* ANSWERS the question of who fired first: BATF agents, shooting the Davidians' dogs. Under the circumstances, it would not be surprising if residents of Mt. Carmel responded to these initial shots by firing at their attackers. But Reavis concludes there's not enough evidence to decide if that's what happened, or if, as the Davidians claimed, the BATF fired at them first. Tabor and Gallagher note that "the surviving videotape footage of the shoot-out shows BATF agents firing heavily and randomly at the building, but the cars and trucks behind which they are crouched show no signs of return fire—windshields are intact, no dust is being kicked up around them. As Reavis reports, the two attorneys who visited Mt. Carmel after the raid said they saw bullet holes consistent with the Davidians' claim that they were fired upon from a helicopter. In this context, the indignation displayed last summer by Rep. Charles Schumer (D-N.Y.) at the very suggestion that the BATF might have fired first is almost as silly as his amazement at the price of breakfast cereal.

Reavis, who is meticulous and fair-minded in sifting through conflicting accounts, also remains agnostic on the question of how the final conflagration started. He does not rule out the possibility that the government's tanks helped start the fire by knocking over lanterns and cans of fuel, and he notes that the rounds of tear gas (technically, CS powder) that the FBI fired into the building contained the petroleum derivative methylene chloride. "Used in a confined space," he writes, methylene chloride "threatened to create conditions conducive to fire, explosion, and death by poison gas." Reavis suggests that the fire may have been ignited by incendiary devices used by the Davidians against their attackers. "Those tanks are not fireproof, you know," Koresh had warned the FBI in March.

Whoever started the fire, the government clearly made it more lethal, and not just by failing to have fire-fighting equipment nearby, despite fears that the confrontation would end in flames. "Rather than creating escape routes," Reavis writes, "the tanks that rammed Mt. Carmel closed them. They demolished the stairways connecting the building's first and second floors, and also pushed debris over a trapdoor leading to a buried school bus, whose exit opened to the fresh air outside. The bodies of six women were found within feet of the trapdoor, dead of smoke inhalation."

Six other women and children were killed by falling chunks of concrete knocked loose during the attack (which was accompanied by the incantation, "This is not an assault," over the FBI's loudspeakers). In light of these details, President Clinton's summary of Mt. Carmel's demise—"some religious fanatics murdered themselves"—is obscene.

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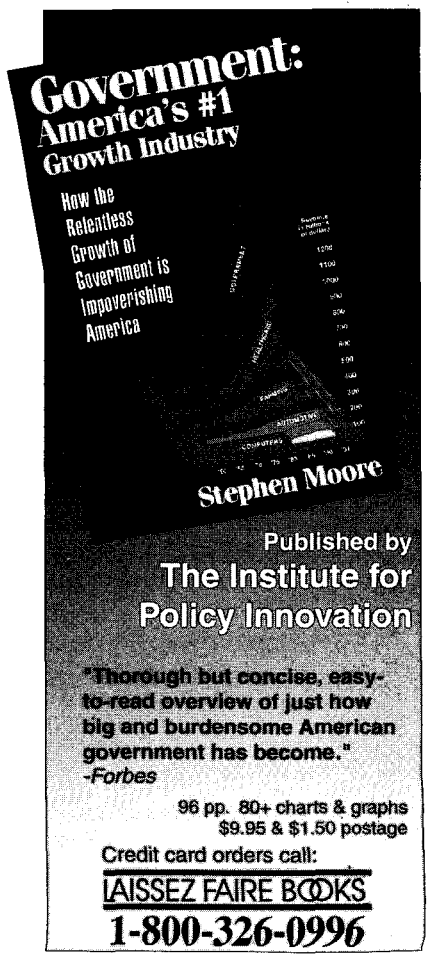
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AS THESE BOOKS SHOW, THAT WAS JUST one of the more egregious whoppers in a pattern of public deception that began the moment the BATF raid became known. With almost complete control of information reaching members of the press, who were not permitted to contact the Davidians or approach Mt. Carmel, FBI officials were free to pass propaganda off as news. Some of their lies were petty, such as the claim, dissected by Reavis, that the Davidians refused to accept a delivery of milk for their children. Others had serious consequences, such as the recycled allegations of child abuse, carefully examined by University of Texas sociologist Christopher G. Ellison and doctoral student John P. Bartkowski in *Armageddon in Waco*, that Attorney General Janet Reno claimed had motivated her decision to approve the final attack. "We had information that babies were being beaten," she said.

But Ellison and Bartkowski find that, while the Davidians (like millions of parents throughout the country) did use corporal punishment, the allegations of severe beatings were based on accusations by a few apostates prior to 1990. While they reserve judgment on the accuracy of those reports, they note that Texas investigators did not find evidence to substantiate them and that the children released during the siege, who seemed genuinely fond of Koresh, showed no signs of abuse. Reno also suggested that the children were suffering because of unsanitary conditions at Mt. Carmel, but she failed to note that the siege had contributed to those conditions (by preventing the Davidians from disposing of human waste, for example). On the other hand, Ellison and Bartkowski conclude that Koresh probably did violate Texas law by having sex with teenage girls (with their parents' consent) as part of his effort to produce offspring that he believed would play a special role in fulfilling biblical prophecy.

As Reavis reports, much of the government's incompetence and duplicity was revealed at the trial of 11 surviving Branch Davidians in 1994. The jury rejected the main thrust of the prosecution's case, acquitting the Davidians of conspiring to murder federal agents. (Because the prosecutors argued that the defendants joined the conspiracy by becoming Koresh's followers, the "crime" essentially consisted of adopting certain religious beliefs.) Three Branch Davidians were found not guilty on all counts. Seven were found guilty of aiding and abetting the voluntary manslaughter of federal officials; of these, five were also found guilty of carrying a firearm during the commission of a violent crime. Two were found guilty of the weapon violations that were the pretext for the BATF raid that set the whole fiasco into motion. Subsequent comments by the forewoman made it clear that the jurors expected the convicted Davidians to be lightly punished. "Even five years is too severe a penalty for what we believed to be a minor charge," she said.

But the jurors made a mistake. They were not supposed to find the Davidians guilty of carrying a firearm during the commission of a violent offense unless they also found them guilty of the murder conspiracy charge. Judge Walter Smith Jr. initially said he would resolve the inconsistency by setting aside the firearm conviction. Later he changed his mind, declaring that the Davidians were guilty of conspiracy to murder the BATF agents, even though the jury had found the opposite. Smith imposed 40-year sentences on five of the defendants and gave three others sentences of 20, 15, and five years, respectively. He ordered each of these eight to pay $1.2 million in restitution to the BATF and FBI.

After relating this final outrage, two of the books conclude by alluding to verdicts yet to come. In *Armageddon in Waco*, Dean M. Kelley, counselor on religious liberty for the National Council of Churches (and author of a fine retrospective on Waco that appeared in the May 1995 issue of *First Things*), notes that history sorts out the great religions from the obscure cults. Centuries from now the Davidians who died at Mt. Carmel may be remembered as saintly martyrs. Reavis closes *The Ashes of Waco* by noting the survivors' confidence that God will vindicate them on the Day of Judgment, when Koresh will return to Earth. The record of the government's dealings with the residents of Mt. Carmel suggests that it's more reasonable to hope for justice from heaven or history than to expect it here and now. ®

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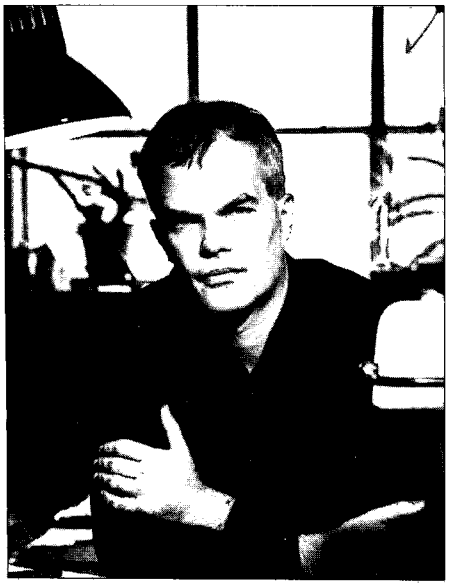
The Forgotten Founder

By Steven Hayward

Founding Father: Rediscovering George Washington, by Richard Brookhiser, New York: The Free Press, 215 pages, $25.00

GEORGE WASHINGTON IS THE NEglected founder. He is either debunked at the hands of revisionist sophisticates, or sentimentalized through what might be called the eternal return of cherry-tree iconography. Richard Brookhiser has produced a valuable and, I predict, enduring contribution to the literature on Washington that turns a deserved cold hand to the debunkers while keeping sentimentalism to a minimum. Along the way, Brookhiser's "rediscovery" of Washington shines a refracting light on the afflictions of our historical outlook today, and supplies the material for useful reflection on what is possible from public figures.

Of the two hazards to Washington's reputation, sentimentalism is probably the worse foe. Brookhiser rightly notes that



Richard Brookhiser: His new biography rescues Washington from both debunkers and sentimentalists. He tells of the blend of Washington's character, showing his moral, dramatic, religious, and intellectual influences.

"The humanizers have done more damage to Washington than the debunkers." Certainly Parson Weems's fable of the cherry tree is a bit of noisome bunk that deserves the contempt of the debunkers. But our generation's recoil from sentimentalism and filial piety has left Washington "in our textbooks and in our wallets, but not our hearts." This condition has made Brookhiser's task—"a moral biography in the tradition of Plutarch," as he describes it—very tricky indeed. Brookhiser wants to reestablish Washington's reputation as more than just a subject of antiquarian curiosity. To attempt such a "moral biography" in an age that prefers Fawn Brodie to Plutarch requires that the author reacquaint readers with the possibility that the moral horizon of Washington's time is plausible in our own.

This would seem an especially tough sell to today's so-called liberals, who dismiss the American Founding as irrelevant to modern politics. But the more serious objections to Brookhiser's Washington project may come from the contemporary champions of classical liberalism (or at least its "public choice" variant), who generalize from the ample evidence in modern politics that all ambition can be reduced to calculations of self-interest. Washington appears as either an insincere or simply incredible figure. "The pursuit of power with the capacity and in the desire to use it worthily is among the noblest of human occupations," Winston Churchill wrote in his biography of Marlborough. Today power is so distrusted—with all good reason—that it has become difficult even for the friends of liberty to imagine that a noble and self-limiting ambition for power is even possible. Hence the incredulity over Washington.

WASHINGTON WAS OFTEN COMPARED IN his day with Cato the Younger, of whom Plutarch had written that "every class of men in Utica could clearly see, with sorrow and admiration, how entirely free was everything that he was doing from any secret motives or any mixture of self-regard." Brookhiser's account is entirely harmonious with this seemingly archaic view. "Washington was worthy of honor," Brookhiser concludes, "because the last thing he had done with power was to resign it.... Washington's last service to his country was to stop serving." No term limits were necessary in those days. Washington's self-limiting example sufficed until the coming of the Leviathan state during the New Deal erased not only Washington's example but his principles as well.

Brookhiser's account makes clear, however, that neither Washington nor his 18th-century admirers were oblivious to interest, nor did they seek to draw a veil over interest through classical heroic imagery. Washington himself wrote that "it is a maxim founded on the universal experience of mankind, that no nation is to be trusted farther than it is bound by its interest; and no prudent statesman or politician will venture to depart from it." But for Washington, as for the other Founders, while interest must always be reckoned as a motive force that would tend toward the dissolution of republican government, it was also true that educated men have an interest in the noble possibilities that republican government has to offer, namely, the independence and individual flourishing that democratic self-government alone

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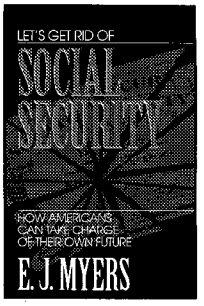

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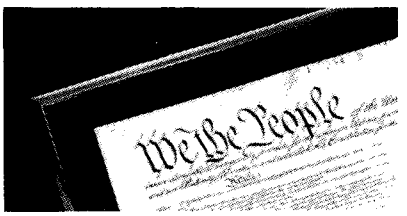

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That is why the constitutional arrangements of our government were crafted to channel self-interest to noble ends. This is an aspect of the thought of the Founders that is badly underappreciated, even by the modern-day friends of the Founding. As James Madison wrote in *The Federalist*: "As there is a degree of depravity in mankind which requires a certain degree of mistrust: So there are other qualities in human nature, which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form." Washington, as Brookhiser's rediscovery makes clear, was the highest exemplar of those republican qualities.

Washington might be dismissed as being the Colin Powell of his day—widely respected for his command of a fortuitous military venture and for the indeterminacy or derivative nature of his political views. On the surface, one can point to a mixed military record. He lost more battles than he won. Brookhiser does a singular service in reviving Washington's credentials as a no-nonsense strategist and commander. The revolutionary army had of necessity to fight a defensive war against the superior forces of the British, anticipating Lord Kitchener's dictum that "One cannot wage war as one ought, but only as one can." But Washington was able to conceive the war in such as way as to change the strategic equation. He did this by confining the British for most of the war to the northeastern theater, between New York and Philadelphia, alternately hitting the British and retiring beyond their reach. "But by fighting an aggressive defense," Brookhiser notes, "he raised the cost of victory for the British to an unacceptable level," and "destroyed whatever strategy the British possessed."

THE ACCOUNTS GIVEN BY HIS CONTEMPORaries of his manner of command and his strategic sense in battle reminds one of similar accounts of great commanders such as Marlborough or Napoleon. Alexander Hamilton noted that "he directed the whole with the skill of a master craftsman." This and countless other assessments track closely with Churchill's descriptions of his great ancestor, Marlborough, whose presence on the battlefield "diffused a harmony all around him."

Off the battlefield, in the arena of political thought, Washington has always taken a back seat to Jefferson, Madison, and even Hamilton (not to mention the anti-Federalist writers such as Patrick Henry and George Mason). Brookhiser makes clear that this is an unwarranted slight. Brookhiser observes: "Washington's relation to ideas has been underestimated by almost everyone who wrote of him or knew him, and modern higher education has encouraged this neglect....Neither Washington's ideas, nor his belief that right ideas were a necessary attainment of public men, have survived in their original form." Washington wrote no political broadsides or pamphlets like *Common Sense* or *The Federalist*. His political thoughts were set down mostly in letters, and as Brookhiser notes, "Appreciating Washington's spoken and written words takes time and effort."

It is a common mistake supposing that Washington and the other revolutionaries were fighting merely for their "rights as an Englishman," rather than for universal natural rights. But Washington quickly came to conceive of his rights in universal terms.

Brookhiser comes close to repeating the common mistake of supposing that Washington and the other revolutionaries were fighting merely for their "rights as an Englishman," rather than for universal natural rights. But Brookhiser notes quickly that Washington quickly came to conceive of his rights in universal terms. Washington's most ringing expression of this view came in his "Circular to the States," written on the eve of his resignation from command of the army following the conclusion of the treaty of peace with Britain: "The foundation of our empire was not laid in the gloomy age of Ignorance and Superstition, but in an Epocha [sic] when the rights of mankind were better understood and more clearly defined, than at any former period; the researches of the human mind, after social happiness, have been carried to a great extent; the Treasures of knowledge, acquired through a long succession of years, by the labours of Philosophers, Sages, and Legislatures, are laid open for our use...." Here is a confident expression of Enlightenment reason at its highest. But, Washington was quick to warn his fellow citizens that if the nation "should not be completely free and happy, the fault will be intirely [sic] their own"—a recognition that self-government allows no excuses.

Washington also penned one of the best formulations of the idea that is most prominently associated with Jefferson: religious freedom (as opposed to mere toleration). In his letter to the Hebrew Congregation at Newport, Washington again anchors the idea on the firm ground of natural right: "It is now no more that toleration is spoken of as if it were the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights, for, happily, the Government of the United States, which gives to bigotry no faction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support." (Brookhiser's book does not contain these passages in their entirety; readers who wish to delve into the fullness of Washington's prose should obtain the Liberty Fund edition of Washington's letters and papers, edited by W.B. Allen.)

Washington's greatest service, in the end, was his tenure as the first president. With more than just an eye toward the pre-

cedents he would set as the first occupant of the executive office, Washington was aware that, as he wrote a friend, "We now have a National character to establish." Hence his goal in office was, according to Brookhiser, "to develop an etiquette appropriate to the republican model of government." Washington experienced nearly all of the tensions that we witness today between the legislative and executive branches of government, and had Washington acted differently then, circumstances might be very different today—probably for the worse.

ABOVE ALL, BROOKHISER'S BOOK MAKES a clear case that the goal of Washington's statecraft was to establish that government by the consent of the governed meant that the reasonable decisions of the majority—decisions that did not trample an individual's natural rights—could not be negated by a willful minority. "If a self-governing people decided legitimately to do a thing," Brookhiser summarizes the issue, "could some people then prevent it from being done?"

The issue presented itself in acute form in the Whiskey Rebellion on the frontier. Washington felt some sympathy with the burdens the whiskey tax imposed on frontiersmen, but he also felt the authority of the republic was in jeopardy if its laws could be willfully flouted. Washington wrote that "if the laws are to be so trampled upon with impunity," and "a minority...is to dictate to the majority, there is an end put at one stroke to republican government." Washington readied a strong show of federal force, but deployed it with restraint, with the Whiskey rebels deciding among themselves to back down from their radical threats.

If Brookhiser avoids the sentimentalism of past encomiums, he nonetheless produces a new sentimentalism borne of today's cultural conservative fixation with fatherhood and family values. "The contemporary failure of fatherhood is perhaps the subtlest barrier to our understanding of Washington, the greatest source of the distance between us and him," Brookhiser writes in the introduction. Hence the chapter on Washington and fatherhood is written too much as a mirror to our own time rather than Washington's. "We are not sure what the fathers of families do," Brookhiser laments, "much less fathers of countries." The childless Washington, Brookhiser concludes, settled on his countrymen as his substitute children. This is taking the metaphor of fatherhood—which alludes to the most fundamental act of politics (founding)—too far. It is doubtless true that in the age of liberal democracy (the "end of history"), the idea of political founding seems remote, but it is a stretch to lump the pathologies of the contemporary family together with the desuetude of the idea of founding. Not to mention that Brookhiser seems to assume that no one in modern America has a decent father—quite a stretch. Conservatives at times get so wrapped up in their rhetoric that they forget that most Americans, and certainly most Americans likely to read this book, do in fact have perfectly decent fathers. And that we may have strong fathers without having 18th-century ones.

This chapter is the only part of the book that seems incongruous, though even here one must assent to Brookhiser's summary judgment that "Washington was the most important man in America, whether he was onstage or off, for twenty-four years; for seventeen of those years, he was front and center. It is a record unmatched in our history, scarcely matched in the histories of modern democracies."

Finally, Brookhiser provides a nice account of the blend of Washington's character, showing us his moral, dramatic, religious, and intellectual influences. He also ably brings out Washington's nasty temper, which sounds as though it could have matched the oft-described "volcanic" temper of the current occupant of the White House. In this passage the reader is again reminded of Churchill's description of the various aspects of Marlborough's character and aims, of which Churchill wrote that "No one of these purposes could be removed without impairing the others, and part of his genius lay in their almost constant harmony." Likewise, Brookhiser

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notes of Washington's many traits that "Each aspect was necessary, however. Without his physique and the threat of his temper, he would have been inconsiderable; without his ideas, he might have been directionless. If he had lacked any of the three or possessed any to a lesser degree, he could not have been the father of his country." ®

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American Scream

By Nick Gillespie

Miss America, by Howard Stern, New York: HarperCollins, 482 pages, $27.50

Howard Stern: Not just a purveyor of crudity, he is a great satirist, revelling in the mismatch between perception and reality, between what we say and what we do.

FOR REASONS THAT ARE CLEAR—IF not at all convincing—the media absolutely loathe Howard Stern, the New York–based radio and TV personality who just happens to be the country's greatest living satirist. Stern is, of course, hugely popular with wide segments of the American people: His daily drive-time radio show airs in about two dozen markets across the country; his nightly show on cable's E! network is among that channel's most popular features; his first book, *Private Parts* (1993), was a chart-topper and his latest, *Miss America*, is the fastest-selling title in its publisher's history. But critics—whose moralistic pronouncements are not burdened by familiarity with Stern's radio, television, or written work—take a quick peek at the man and his shtick and cluck their tongues, convinced that here is just one more example of vulgarity über alles.

"Because he continues to embrace the qualities of a child splashing in sewage, Stern still belongs among those icons of depravity who make their living pandering to humanity's basest instincts," proclaims Al Martinez of the *Los Angeles Times*, who dubs Stern the "king of excrement." Stern's popularity, Martinez cryptically warns, "ought to tell us something about ourselves in an age that fawns over what it loves and blows up what it hates."

For Alan Ehrenhalt, the executive editor of *Governing* magazine and the author of *The Lost City,* Stern is symptomatic of an economic system that dares give people choice. Writing in *The New York Times*, Ehrenhalt invokes Stern as the horror child of laissez faire economics: "The tyranny of the market...has destroyed the loyalty of corporations to their communities; customers to their neighborhood merchants; athletes to their local teams; teams to their cities. The market has given us Howard Stern."

"Stern is no satirist, a latter-day Jonathan Swift making 'a modest proposal,'" contends Linda Chavez in *USA Today*. "He incites nastiness, crudity, and effrontery...Stern has made millions with this trash....[M]aybe [we] can shame the media executives who give Stern a platform." Echoing the *Times*'s Martinez, Chavez asks, "What does it say about the state of our popular culture that radio shock-jock Howard Stern can replace Colin Powell as the best-selling author in America?"

Short answer: *It means things are pretty damn swell.*

Contrary to Chavez, Stern *is* indeed a latter-day Jonathan Swift—and not just because he is nasty, crude, and scatological (go read *Gulliver's Travels* some time). There is a quasi-political message to be gleaned from Stern's inspired rants and ramblings, one that is particularly relevant to a media-saturated, market-based society. In the tradition of folks such as Mark Twain and Lenny Bruce, Stern's search-and-destroy hijinks puncture the pretensions of all manner of fakes and phonies. He relentlessly and systematically debunks the fictions we tell about ourselves. He is particularly brilliant at deconstructing the pat, clichéd narratives that actors, politicians, and other public figures spin to their own advantage. In an age of overweening celebrity, that alone should make him a national treasure.

No wonder, then, that the media dislike him. They crave good "stories"—tight little tales that assume predictable, easily recognized shapes and reinforce already-held notions. But in this sense, Stern is resolutely anti-story, revelling in the mismatch between perception and reality, between what we say and what we do. He delights in pointing out just how large that gap often is. (That's also one of the reasons why he is such a great interviewer of celebrities—he gets them to step out of their well-rehearsed raps.) Stern's popularity is an indication that many people maintain a healthy skepticism toward the machinations of hucksters of all stripes.

And it's worth pointing out that despite his open obsession with strippers, lesbians, and sexual fantasies, such musings are a minor part of his act. Stern is, in fact, a moralist whose teachings could hardly be more traditional. Indeed, what drives him insane is the degree to which some people get let off the moral hook.

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The secret of life, he wrote in *Private Parts*, is simple: "You wake up in the morning. You eat a little breakfast, maybe read the newspaper. If you're lucky enough, you're married. You yell at your wife, you make up with your wife. If your testicles feel all right, you bang your wife. You watch a video you rented or maybe you go out to the movies....That's life. If you have kids, you live with the kids. You don't move out on your wife....That's the secret of life."

As his superb *Miss America* makes abundantly clear, Stern goes about his business with a child's sense of discovery, outrage, and insistence. Consider his comments on the Kennedy family: "The Kennedy men bother me enough," writes Stern, "but the idolization of the Kennedy women makes me berserk. People always get pissed off when I blast the Kennedy women, but they should thank me for the hypocrisies that I point out.

"Let's start with Rose Kennedy: What kind of role model is that? Here's a woman who buried her head in the sand and sat idly by while her husband fucked every Hollywood bimbo on two feet. The whoremeister General Joe Kennedy would even bring home Hollywood starlets to sit at the dining-room table with the whole family while Rose Kennedy kept her stupid mouth shut....[T]his woman should be ashamed of herself. No wonder her sons grew up and couldn't keep it in their pants. Just remember: The fruit doesn't fall far from the scumbag."

In "An Open Letter to All the Third Generation Kennedys (Except for my friend, Arnold Schwarzenegger)," Stern adds, "You don't know what it's like to grow up in the real world, to actually have to work for a living....My grandfather wasn't a criminal who passed down his money to a series of leeches who are so nonproductive that they've just about pissed away the family fortune....My uncle never drowned a poor young woman and got away with it. My aunt never married an old Greek just so she could raid his coffers. My uncles never gang banged Marilyn Monroe." This is powerful, outrageous, irreverent stuff—all the more so because it is essentially (if not quite literally) true.

While Stern might have the energy level of a child, however, it's wrong to think that he is an unsophisticated observer. The chapter of *Miss America* detailing Stern's clandestine meeting with Michael Jackson demonstrates that the "shock jock" possesses a pretty sharp mind. In 1994, after Jackson had settled a child-molestation charge out of court and married Lisa Marie Presley, his agent contacted Stern. In a meeting at Dolly Parton's Manhattan apartment, Jackson's agent spun out a scenario in which Stern, who had mercilessly lampooned Jackson for years, would champion the singer and lead a "spontaneous" demonstration in the "streets" supporting Jackson.

As the agent unveiled the absurd plan, Stern kept sneaking peeks at Jackson, who sat silently in the room, his face slathered with thick white makeup, his nose covered in dirty, unraveling surgical tape. Stern paints a portrait of a literally dissolving image: "It is getting hot and every few minutes Michael is wiping his face ...and now there are big black smudge marks running all over it....[His agent] keeps talking like Michael is normal....I want to stand up and call 911: Come quick, we've got a melting Michael Jackson on Dolly Parton's chair. Over!"

Stern, of course, turned down the offer to be part of Jackson's public relations rehab team. And his critique of Diane Sawyer, who later aired a puff piece interview with Jackson and Lisa Marie, is nothing short of devastating. Sawyer, he says, is "just Sally Jesse Raphael with better skin and hair." Her interview was "candy-cane journalism."

"The interview was pathetic," writes Stern. "She did everything but beg the audience to take to the streets for MJ....And then I realized that the son of a bitch even got the masses into the streets for him. Of course, he had to pay them, but take a look at that stupid movie trailer that...ran during the show. The streets are lined with weeping fans. They're holding up signs saying KING OF POP. And here comes

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Michael, like a conquering monarch. He's got the gay militia outfit on, with the hockey shinguards, and he marches into town, surrounded by troops, waving, blowing kisses. The camera is pulled back so you can't see the melting face. It's a perfect world." But even as "everybody falls into line," Stern notes that "Michael's record sales go into the toilet. Why? Well, partly it's just that the music sucks, and partly it's the nasty smell of those charges, charges that linger in the public's mind because there are questions that were never answered."

Even Stern's most seemingly juvenile antics reveal a contempt for glossy, prefabricated images. For instance, one of the most popular—and pilloried—parts of Stern's radio program involves his sending his crony "Stuttering John" out to interview celebrities. As he did in *Private Parts*, Stern devotes a chapter to John's misadventures. "To me," writes Stern, "John has the scariest job imaginable. He has to approach celebrities and, armed only with a microphone and a list of cleverly engineered questions that we write, verbally terrorize them into revealing their true essence to the world....Morton Downey Jr. overturned a table and threw John to the floor....Eric Bogosian grabbed him and slammed his head up against a wall....Lou Reed put his hands around John's neck, trying to strangle him.... Raquel Welch whacked him right in the nose" after he asked her, "Are they drooping yet?"

WHAT IS BRILLIANT ABOUT THE BIT IS that it catches off guard celebs who thrive on presenting a seamless image to the public—it is guerilla theater at its best. The results can be nothing short of hilarious, as when John showed up at a Burt Reynolds book signing and asked the question, "Did you avoid Ned Beatty after he got raped in *Deliverance*?" As security guards bear down on him, Stern tells us, John is able to get off one final question to the enraged actor: "Burt! How do you respond to charges that you are hot-headed?"

In the same vein, Stern devotes a chapter to "the unleashing of the mad phone stalkers," fans of his program who harass other radio and TV programs with fake calls. Highlights include calls to the *Today* show with Ross Perot as a guest ("Mr. Perot," queried the caller, "Have you ever had the desire to mindmeld with Howard Stern's penis?"), to CNN's *Sonya Live* during the World Trade Center bombing (posing as a worker trapped in the building, a caller attributed the explosion to one of Stern's farts), to local Oklahoma TV in the wake of the Oklahoma City bombing (impersonating Rep. Frank Lucas, a caller

Stern's "Stuttering John" routine catches off guard celebs who thrive on presenting a seamless image to the public—it is guerilla theater at its best. The results can be nothing short of hilarious.

told viewers that the suspects were Islamic men and one of them was believed to be Howard Stern). "What's amazing," Stern writes, "is that these genius phone artists can go right on the air...and no one even bothers to check them out."

The ultimate coup came when a caller got through to Peter Jennings of ABC News during the conclusion of O.J. Simpson's Bronco chase. While Simpson's truck was parked outside his Brentwood home, the caller got on by posing as one of Simpson's neighbors. The caller, as Stern tells it, "slipped into a thick black dialect that made Kingfish seem like a Rhodes scholar," complete with observations along the lines of "Oh, my Lord, this is quite tenses" and "Now lookee here, [O.J.] look very upset. I don' know what gon' be doin'." While such shenanigans are in undeniably bad taste, Stern correctly points out, as with Stuttering John's questions, that the media get what they deserve: "If Jennings wasn't a wooden Indian, he would have realized that this guy is a fake. First of all, his dialect was obviously phony. Second, a shucking and jiving black man is obviously not O.J.'s neighbor. All Jennings could see was his exclusive!"

Stern's account of his abortive 1994 run for governor of New York on the Libertarian Party ticket similarly illustrates his penchant for discombobulating standard procedure. While some LP members are no doubt still smarting from the experience, there's no question that Stern heightened the party's visibility while also mocking politicians, always a worthwhile activity. For example, he recounts how he came clean to the electorate at the press conference announcing his candidacy: "I've got a few faults: I'm forty years old and I masturbate. Maybe I talk about sex too much. I don't think that's a horrible thing. But I'll tell you what my assets are. I am totally honest. There will be no backroom dealings on this. Everything will be done on the radio. I'm embarrassed I'm so honest. Who else would admit to the size of his genitals being under two inches?...So I'm saying that I'm an honest person—and I have the hair to be the governor."

Stern's campaign—which included a photo-op at a strip club called Goldfinger's—was a ferocious parody of the political process, right up to its anti-climactic end, when he dropped out because he couldn't get a waiver from financial disclosure laws (he notes that his lawyers even filed a challenge against the rules). At his farewell press conference, Stern spoke after being introduced by a man who "suffered from throat cancer and ...could only speak through his voice kazoo." Stern relates his criticism of disclosure laws: "I want you to know that I spend twenty-five hours a week telling you all the most intimate details of my life. Name another candidate who gives you such disclosure. Has Mario Cuomo ever told you the size of his penis? Has he talked about the stains on his underpants and burying those underpants in his backyard when he was young? And this guy Pataki [whom Stern would later endorse], has he ever shown you his face on cam-

era, much less his ass at the MTV Music Video Awards?"

TO BE SURE, THIS KIND OF HUMOR IS NOT for all tastes. But it is remarkably consistent and Stern, like all great satirists, rarely forgets to train his guns on himself and his image. "There are those in my audience who think I'm busy going to parties and socializing with celebrity friends," writes Stern in a chapter on cybersex. "But the pathetic fact is, I sit in my basement...and seldom emerge except for meals."

Stern's attempts at scoring on the Internet are no more successful than his pitiful, pre-marriage attempts were in the real world. "If you're ugly, if you're deformed, and married for twenty years, this is the place for you....Here on Prodigy chat I'm a single, Brad Pitt look-alike," he says. But alas, that's only one more illusion that fades away. After striking out with a potential cybermate, Stern notes: "Well, a major theory of mine had just been shot down. For forty-one years I had always believed that I was one of those guys who had a great personality but women never noticed me because of my ugly face. Turns out, not only am I ugly, but I have a dip-shit personality." And even when he finally does find cybermates, the sex turns out to be less than perfect—typing and masturbating don't really work well together and he has a bit of a performance problem ("Not even two minutes into this cybersex and I blow my load. I prematurely ejaculate *even* with computer sex").

True to form, Stern must completely tear apart the image: He eventually brings "Rubberbaby," a cyberlover who had described herself as a Janine Turner lookalike into his radio studio. "Rubberbaby shattered my illusions....My dear sweet vixen was...well, she was a housewife on fucking crutches. She wasn't ugly, but she wasn't exactly a fantasy woman....The way she was hopping around the studio on one leg to give me a hug wasn't exactly filling me with fantasies," writes Stern, who swears he will not "use the computer for sexual purposes, ever again."

Although Stern's unending demolition of public and private narratives strikes some as nihilistic, cruel, and perverse, it seems to me that it is absolutely an appropriate response to the world in which we live. When Stern asks, say, Woody Allen pal Dick Cavett, "Do you have any daughters I can bang?" he isn't simply going for a cheap laugh. He is driving home the point that when everyone is constantly trading in self-serving visions of goods, services, and themselves, the only proper response is to insist on honesty. It is Stern's willingness to stand by that fundamental truth that energizes his satire and binds him to his audience. ®

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Energy Crisis?

By Thomas W. Hazlett

Don't have a cow about Energy Secretary Hazel O'Leary.

When U.S. Energy Secretary Hazel O'Leary was discovered running up extraordinary travel costs—apparently failing to take full advantage of the efficiencies instituted by the president's reorganization of the White House travel office—she responded proudly that her far-flung international itinerary had benefited American business to the tune of $19.7 billion. In fact, that was her conservative estimate, as she had already testified before Congress that some $27.7 billion in contracts had been secured by U.S. firms as per her marketing efforts. That seemed like a hot return on a few measly millions of dollars in airfare and hotel charges.

But economic benefits are often difficult to estimate with pinpoint accuracy. Hence, in a revised Energy Department scenario, agency officials whittled the actual benefit number down to $2 billion. It was important, said the department spokeswoman, to separate out the "finalized or bottom-line results" from "total potential value." By whatever measure, Vice President Gore chimed in that Mrs. O'Leary had created "thousands of jobs" with her exhaustive schedule.

But there are some who believe that the better way to create thousands of real jobs would be to abolish the Department of Energy, an agency that evades public responsibility by floating below the voter's radar screen. Its fairy tale existence began in the "energy crisis" of 1973–74, when a temporary Federal Energy Administration was created to deal with the notorious oil shortage. Those gas lines actually began in Spring 1973—prior to the Arab oil embargo—and were the direct product of the wage-and-price-control scheme (a Nixonian fiasco curiously escaping Oliver Stone's cinematic genius). This made the FEA the perfect governmental solution: Hire federal bureaucrats to fill in holes which other federal bureaucrats dig.

When the oil-price controls were ended, circa 1981, the shortages disappeared—a coincidence with implications so deeply conspiratorial that energy policy may yet ignite Mr. Stone's well-developed sense of fancy. Now, a decade and a half later, we have seen the hurly-burly forces of the unregulated marketplace deliver us gasoline for about $1.10 a gallon. In 1970 dollars, and accounting for the buried tax increases, this reduces to about a nickel, give or take. It's far below what consumers paid for gas in 1960, 1970—or at anytime in our history before we had an energy "crisis."

So: For what do we need a Department of Energy? The agency was slated for abolition by President Reagan in 1981 and the Republican Congress in 1995, but today it thrives with an annual budget of $15.4 billion. It's more alive, certainly, than Elvis. The DOE really doesn't do much for the money: The energy price controls are abolished, and we have no U.S. energy policy—as every esteemed, high-level commission has ominously warned us about for two decades now. DOE pushes around some synfuel subsidies here, promotes some U.S. exports there, doles out some research funds —penny-ante stuff.

Of course, an agency that really doesn't do much may be performing optimally. The robust U.S. economic growth of the past decade, in substantial measure a product of declining energy prices, is testimony to the DOE's wisdom in restricting its activities to more or less meaningless public demonstrations and petty political graft. In this world, letting the energy secretary jet to India for $750,000, or put her best friend on the payroll at a little over standard government pay scales, or hire private firms to monitor reporters (producing a list of agency friends and enemies), is just paying the freight for efficient (read: irrelevant) performance. Promise not to mess with the real economy, and your international escapades are on us.

When General Accounting Office auditors were called by congressional Republicans to testify about the travel expenses rolled up by the DOE, Democrats launched a counterattack. Employing the sharp prosecutorial questioning of Rep. John Dingell (D-Mich.), they uncovered that GAO investigators had found no evidence that the DOE had broken any law. Sure, the GAO found hundreds of thousands of dollars in expenses unaccounted for, uncovered phantom billings, and discovered that Madame O'Leary's transoceanic, rock-star–like entourages included scores of unnecessary DOE employees.

But the Democrats were absolutely right: This isn't illegal. It's just government business as usual.

"Reinventing government," that focus-group–tested buzz term of the early Clinton administration, is kind of like the Cubs' pennant chances. Not impossible, but we'll all be pleasantly surprised when it happens. Meanwhile, let's be realistic about the game we're watching. The "reinvented" Department of Energy has nothing to do with U.S. energy policy.

In the end, there is just one DOE number that can be easily verified by taxpayers. We currently have one Department of Energy. What would America lose if we were to have zero?

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu), an economist at the University of California at Davis, is a visiting scholar at the American Enterprise Institute.

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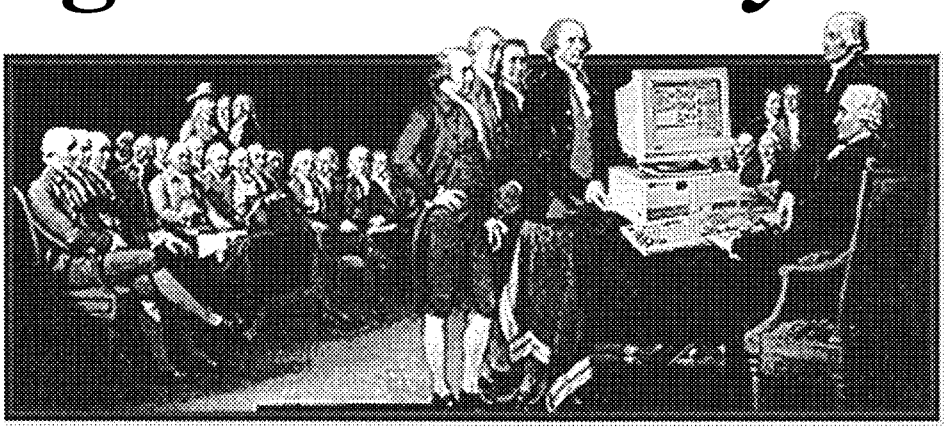

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